

San Francisco Law Library

No.

Presented by

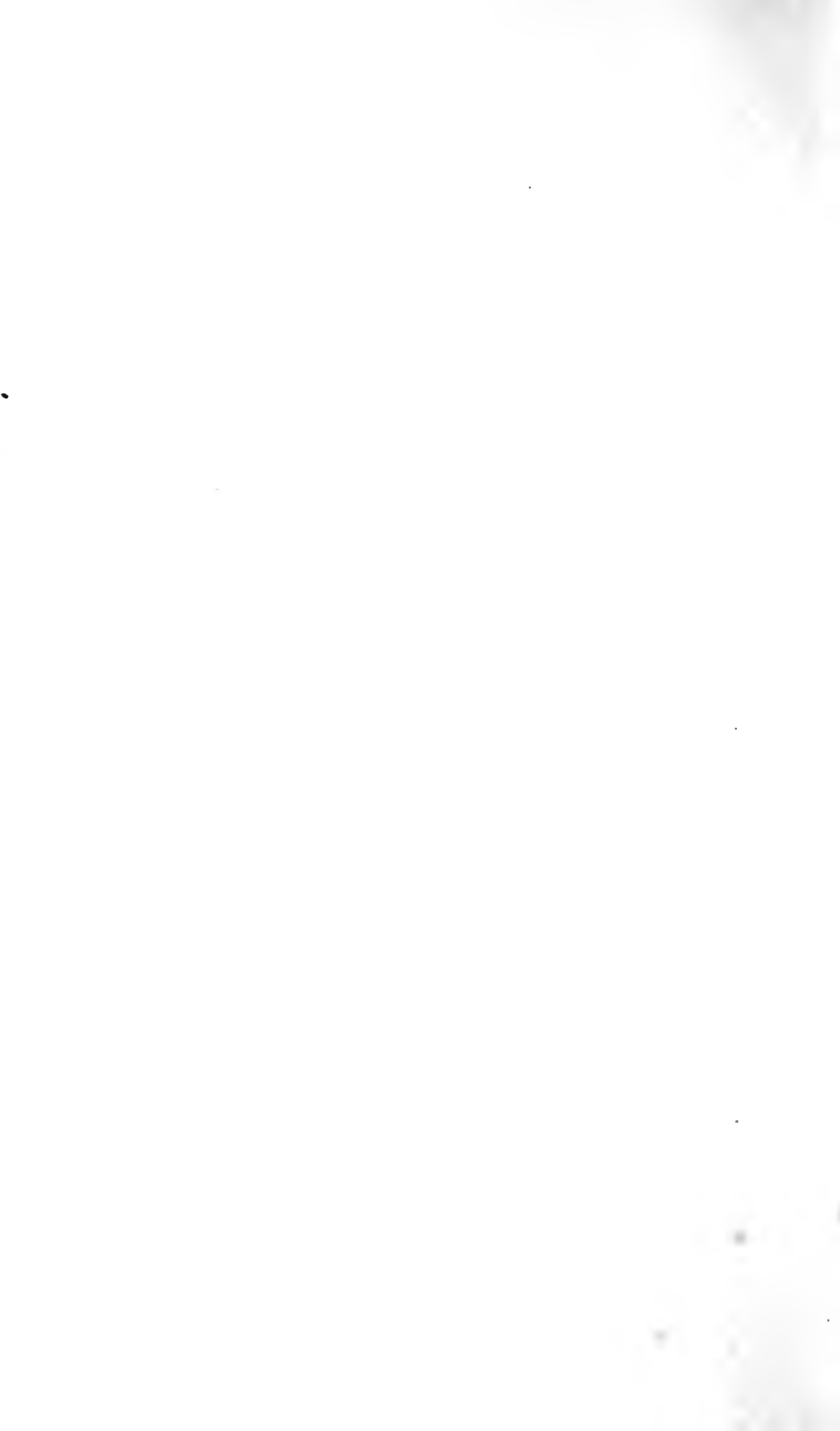
EXTRACT FROM BY-LAWS.

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. A party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov



UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE GLOBE NAVIGATION COMPANY, LIMITED,
As Claimant of the Schooner "WILLIS A.
HOLDEN," Her Tackle, Apparel, and Furniture,
and a Cargo of Lumber Consisting of 1,500,000
Feet, Board Measure,

Appellant,

vs.

THE CHARLES NELSON COMPANY, A Corpora-
tion, JOHN RANSELIUS, Captain, L. C. HAN-
SON, First Mate, R. D. MacRAE, Second Mate,
the First Assistant Engineer and the Second As-
sistant Engineer of the Steam Schooner "Charles
Nelson," Libelants, and H. SMITH, V. ANDER-
SON, W. SIRENS, K. KARLSON, B. TUP, O.
HOLMSTROM, G. GUTENBERG, H. JOST-
MAN, A. SUNKWIST, E. EVANS, and W.
LINE, Sailors, FRANK WESTON, JOHN
BABERG, and JAMES McCUE, Firemen, EMIL
SODERBERG, and PAUL H. MOSIER, Oilers,
J. WUNDERLICH, Steward, A. J. HOWELL,
Cook, C. DAUCHERT, Cook's Boy, and AN-
DREW DOE, Cabin Boy, of said Steam Schooner
"Charles Nelson," Intervening Libelants,

Appellees.

APOSTLES ON APPEAL.

Upon Appeal from the United States District Court
for the Western District of Washington,
Northern Division.

FILED
JUL 5 1889

Records of H. S. Ancient
Account of Appraisals
551



UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE GLOBE NAVIGATION COMPANY, LIMITED,
As Claimant of the Schooner "WILLIS A.
HOLDEN," Her Tackle, Apparel, and Furniture,
and a Cargo of Lumber Consisting of 1,500,000
Feet, Board Measure,

Appellant,

vs.

THE CHARLES NELSON COMPANY, A Corpora-
tion. JOHN RANSELIUS, Captain, L. C. HAN-
SON, First Mate, R. D. MacRAE, Second Mate,
the First Assistant Engineer and the Second As-
sistant Engineer of the Steam Schooner "Charles
Nelson," Libelants, and H. SMITH, V. ANDER-
SON, W. SIRENS, K. KARLSON, B. TUP, O.
HOLMSTROM, G. GUTENBERG, H. JOST-
MAN, A. SUNKWIST, E. EVANS, and W.
LINE, Sailors, FRANK WESTON, JOHN
BABERG, and JAMES McCUE, Firemen, EMIL
SODERBERG, and PAUL H. MOSIER, Oilers,
J. WUNDERLICH, Steward, A. J. HOWELL,
Cook, C. DAUCHERT, Cook's Boy, and AN-
DREW DOE, Cabin Boy, of said Steam Schooner
"Charles Nelson," Intervening Libelants,

Appellees.

APOSTLES ON APPEAL.

Upon Appeal from the United States District Court
for the Western District of Washington,
Northern Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Acknowledgment of Receipt of Certified Copy of Citation, etc.	387
Acknowledgment of Receipt of Certified Copy of Citation, etc.—Original	397
Addresses and Names of Counsel	1
Amended Libel	22
Amended Libel, Answer to	355
Amended Libel of Charles Nelson Company, Stipulation Relative to Answer of the Globe Navigation Company to	372
Answer of the Globe Navigation Company to Amended Libel of Charles Nelson Company, Stipulation Relative to	372
Answer, Replication to Claim and	28
Answer to Amended Libel	355
Appeal Bond, Supersedeas and	382
Appeal, Order Allowing	377
Appeal, Petition for	376
Appearance for Claimant	14
Appearance of Proctor for Intervening Libel- ant, Notice of	33

Index.	Page
Assignment of Errors	378
Bond, Supersedeas and Appeal	382
Bond, Notice of Filing	388
Certificate, Clerk's, to Original Exhibits	399
Certificate, Clerk's, to Transcript of Record	393
Certificate, Commissioner's, to Depositions of James McCue et al.	145
Certificate, Commissioner's, to Testimony and Proceedings, etc.	354
Citation (Copy)	384
Citation (Original)	394
Citation, etc. (Copy), Acknowledgment of Re- ceipt of Certified Copy of	387
Citation, etc. (Original), Acknowledgment of Receipt of Certified Copy of	397
Claim and Answer. Replication to	28
Claim of the Globe Navigation Co.	15
Clerk's Certificate to Original Exhibits	399
Clerk's Certificate to Transcript of Record	393
Commissioner's Certificate to Depositions of James McCue et al.	145
Commissioner's Certificate to Testimony and Proceedings, etc.	354
Counsel. Names and Addresses of	1
Decision, Memorandum, on the Merits	367
Decree	374
Depositions of A. Laur and Ed. Carlson, Stipu- lation to Take	20
Depositions of James McCue, et al., Commis- sioner's Certificate to	145

Index. Page

Depositions on Behalf of Libelant:	
L. C. Hansen.....	109
L. C. Hansen (cross-examination).....	121
Axel Lindgren.....	58
Axel Lindgren (cross-examination)....	63
Axel Lindgren (redirect examination)....	70
Axel Lindgren (recross-examination)....	70
R. D. MacRae.....	86
R. D. MacRae (cross-examination).....	102
James McCue.....	42
James McCue (cross-examination).....	46
John Ranselius.....	125
John Ranselius (cross-examination).....	139
John Ranselius (redirect examination)....	143
John Ranselius (recross-examination)....	144
John Ranselius (further redirect examina- tion).....	145
F. F. Sheppard.....	71
F. F. Sheppard (cross-examination).....	76
F. F. Sheppard (redirect examination)....	83
F. F. Sheppard (recross-examination)....	84
John Wonderlick.....	50
John Wonderlick (cross-examination)....	54
Exhibit 1 (Chart).....	401
Exhibit 2 (Diagram).....	402
Exhibit 3 (Report of Survey).....	403
Intervening Libel.....	35
Letter, Dated April 16, 1908, from James Tyson to N. H. Frank.....	150
Libel.....	6
Libel, Amended.....	22

Index.	Page
Libel, Answer to Amended....	355
Libel, Intervening.....	35
Memorandum Decision on the Merits.....	367
Names and Addresses of Counsel.....	1
Notice of Appearance of Proctor for Intervening Libelant.....	33
Notice of Filing Bond.....	388
Opinion.....	367
Order Allowing Appeal.	377
Order Extending Time to Prepare, etc., Record	2
Order Permitting Transmission of Original Exhibits to Circuit Court of Appeals.....	390
Original Exhibits, Clerk's Certificate to.....	399
Original Exhibits to Circuit Court of Appeals, Order Permitting Transmission of.....	390
Petition for Appeal.....	376
Praecipe for Transcript	391
Replication to Claim and Answer.....	28
Report of Bernard B. Whittier, U. S. Weather Bureau.....	148
Statement.....	3
Stipulation for Costs.....	12
Stipulation for Costs—Filed January 15, 1908..	18
Stipulation Relative to Answer of the Globe Navigation Company to Amended Libel of Charles Nelson Company.....	372
Stipulation Relative to Testimony of James Tyson.....	147
Stipulation to Take Depositions of A. Laur and Ed. Carlson	20
Supersedeas and Appeal Bond.....	382

	Index.	Page
Testimony on Behalf of Libelant:		
Captain S. B. Gibbs.....		296
Captain S. B. Gibbs (cross-examination)..		300
Captain William Gove		303
Captain William Gove (cross-examination)		314
Captain William Gove (redirect examination)		324
Captain William Gove (recalled)		327
L. H. Gray		329
L. H. Gray (cross-examination)		332
Captain L. B. Lovejoy		344
Captain Charles C. Manter		334
Captain Charles C. Manter (cross-examination)		339
Captain Charles C. Manter (redirect examination)		343
George F. Thorndyke		301
Frank Walker ...		288
Frank Walker (cross-examination)		292
Testimony on Behalf of Claimant:		
Ed Carlson		222
Ed. Carlson (cross-examination)		229
Ed. Carlson (redirect examination) ...		236
George Haley		238
George Haley (cross-examination)		240
George Haley (redirect examination)		242
Captain Lauer		243
Captain Lauer (cross-examination)		257

Index. Page

Testimony on Behalf of Claimant—Continued:

Captain Lauer (redirect examination)	272
A. L. Laur	152
A. L. Laur (cross-examination)	182
A. L. Laur (redirect examination)	219
Captain Laury	236
Frank Walker	351

[Names and Addresses of Counsel].

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 3617.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant and Appellee,

vs.

The Schooner "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber Consisting of About 1,500,000
Feet, Board Measure, of the Value of About
\$15,000,

Defendant and Appellant.

H. SMITH et al.,

Intervening Libelants.

GEORGE H. KING, Esquire, 401 Globe Building,
Seattle, Wash.,

H. R. CLISE, Esquire, 420 Globe Building, Seattle,
Wash.,

Proctors for Defendant and Appellant.

JAMES A. KERR, Esquire, 318 Mutual Life Build-
ing, Seattle, Wash.,

E. S. McCORD, Esquire, 301 Mutual Life Build-
ing, Seattle, Wash.,

Proctors for Libelant and Appellee.

[Order Extending Time to Prepare, etc., Record.]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 3617.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN,"

Defendant.

Now, on this 6th day of May, 1909, upon applica-
tion of proctors for claimant and appellant herein,
and for sufficient cause appearing, it is ordered that
the time within which the Clerk of this Court shall
prepare, certify and transmit to the Circuit Court
of Appeals the transcript of the record on appeal in
this cause, be, and the same is hereby extended to and
including the 20th day of May, 1909.

C. H. HANFORD,

Judge.

[Endorsed]: No. 3617. In the District Court of
the United States for the Western District of Wash-
ington. The Charles Nelson Company vs. The
Schooner "Willis A. Holden." Order Extending
Time to File Record. No. 1720. United States Cir-
cuit Court of Appeals for the Ninth Circuit. Order
Enlarging Time to File Record Thereof and to
Docket Cause. Filed May 17, 1909. F. D. Monck-
ton, Clerk.

*In the United States Circuit Court of Appeals,
Ninth Circuit.*

GLOBE NAVIGATION COMPANY, LIMITED
(a Corporation), Claimant of the Schooner
"WILLIS A. HOLDEN,"

Appellant,

vs.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant and Appellee,

H. SMITH, V. ANDERSON et al.,

Intervening Libelants and Appellees.

Statement.

Time of Commencement of Suit.

January 10, 1908.

Names of Parties.

The Charles Nelson Company, Limited, a Corporation, for itself and for others interested as salvors, consisting of John Ranselius, L. C. Hanson, First Mate, R. D. Macrae, Second Mate, the First Assistant Engineer and Second Assistant Engineer, libelants.

H. Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup, O. Holstrom, G. Gutenberg, H. Jostman, A. Sunkwist, E. Evans, and W. Line, Sailors, Frank Weston, John Barberg, and James McCue, Firemen, Emil Soderberg, and Paul H. Mosier, Oilers, J. Wunderlick, Steward, A. J. Howell, Cook, C. Dauchert, Cook's boy, and Andrew Doe, Cabin Boy,

4 *The Globe Navigation Company, Limited,*

Intervening Libelants, vs. the Schooner "Willis A. Holden, her tackle, apparel and furniture and a cargo of lumber consisting of about 1,500,000 feet, board measure, of the value of about \$15,000, and the Globe Navigation Company, Limited, a corporation claimant of said schooner, "Willis A. Holden," and her cargo, etc.

Date When Pleadings Were Filed.

Libel filed January 10, 1909.

Appearance of claimant filed January 15, 1908.

Claim of Globe Navigation Company, Limited, filed January 15, 1908.

Amended Libel, filed February 4, 1908.

Replication, filed February 4, 1908.

Intervening Libel, filed April 29, 1908.

Answer to Amended Reply, filed March 11, 1909.

Stipulation with Intervening Libelants as to answer, filed April 5, 1909.

Process: On filing of libel notice issued to owners of vessel and surety company on general bond, of filing libel; vessel released on general bond under Admiralty Rule 32.

Time of Trial.

This cause was submitted to the Honorable C. H. Hanford, Judge of the District Court, on testimony taken before a commissioner and on deposition on January 27, 1909, and was by him taken under advisement and a memorandum decision on the merits was handed down and filed on March 11, 1909.

Reference to Commissioner.

This entire cause was referred to A. C. Bowman, United States Commissioner, to take the testimony

of the parties and to report the same to the District Court, and said Commissioner took testimony from time to time and reported the same to the District Court on the 27th day of January, 1909.

Testimony was also taken by deposition in San Francisco, which deposition was filed in court on April 16, 1908.

Date of Entry of Decree.

A memorandum decision on the merits was filed in the District Court on March 11, 1909, and the final decree was made and entered and filed in said District Court on April 5, 1909, and Notice of Appeal was filed in the District Court on the 9th day of April, A. D. 1909.

H. R. CLISE,
GEO. H. KING,
Proctors for Appellant.

[Endorsed]: Statement. Filed in the U. S. District Court, Western Dist. of Washington. April 12, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. —.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber Consisting of About 1,500,000
Feet, Board Measure, of the Value of About
\$15,000,

Defendant.

Libel.

To the Honorable C. H. HANFORD, Judge of the
District Court of the United States, in and for
the Western District of Washington, Northern
Division:

The libel of the Charles Nelson Company, a cor-
poration, duly organized and existing under the
laws of the State of California, the owners of the
steamship "Charles Nelson," for itself and others
interested as salvors, against the four-masted
schooner "Willis A. Holden," whereof ——— Sauer
is master, her tackle, apparel, sails, furniture, etc.,
and a cargo of lumber laden aboard said schooner
consisting of about 1,500,000 feet, board measure, of
the value of about \$15,000, in a cause of salvage,
civil and maritime, alleges as follows:

I.

That on or about November 27, 1907, the four-masted schooner "Willis A. Holden," laden with a cargo of lumber consisting of about 1,500,000 feet, board measure, and of the value of about \$15,000, departed from Willapa Harbor in the State of Washington, on a voyage to Shanghai, China; that thereafter the said schooner encountered storms at sea and became disabled, her rudder having been carried away, and said schooner drifted in the waters of the Pacific Ocean, and on, to wit, December 12, 1907, was adrift in the waters of the Straits of San Juan de Fuca, inside Cape Flattery and near the shore in the vicinity of Neah Bay, at which time her jury rudder had been broken and was floating alongside of said vessel, and she was wholly disabled and unmanageable, and was in near proximity to the rocks and reefs and was flying signals of distress and in great danger of being wholly lost together with her cargo, and would have been wholly lost to her owners and to the owners of her cargo, but for the services rendered her by the libelant, as hereinafter stated; that at five o'clock P. M. on December 12, 1907, a strong gale of wind was blowing and the Straits of San Juan de Fuca were rough, and said schooner disabled as aforesaid was wholly unable to have extricated herself from her dangerous position.

II.

That on said last named date the steam schooner "Charles Nelson" of the burden of 1057 tons, of which the libelant was the owner, was inbound to Seattle on a voyage from the port of San Francisco.

III.

That in response to the distress signals of the schooner "Willis A. Holden" the "Charles Nelson" came up to the said schooner, then being disabled and unmanageable as aforesaid, and in imminent peril and in danger of stranding and being lost, and passed a hawser to the said schooner, which was by her officers and sailors attached to her bitts, and with great difficulty and hazard to herself and her officers and owners, towed the said schooner from her place of danger to a safe anchorage at Port Angeles, Washington, about sixty miles distant from the place where said towage began; that in rendering said services the hawser of the "Charles Nelson" was parted on several occasions.

IV.

That said schooner "Willis A. Holden" is owned by the Globe Navigation Company, a Washington corporation, and was at the time of her rescue aforesaid and is now of the value of \$70,000 or thereabouts; that she is a wooden, four-masted schooner of 1188 gross tons and 1040 net tons; that the cargo consisted of about 1,500,000 feet of lumber, board measure, of the value of about \$15,000; that the names of the owners of the cargo or consignees thereof are to the libelant unknown, but that the said cargo is now again aboard said vessel, and she is about ready at this time to again proceed to sea.

V.

That the "Charles Nelson" is a steam schooner as aforesaid, of which the libelant is the owner, and

was at all times herein mentioned and now is of the value of one hundred thousand dollars.

VI.

That in rescuing of said schooner and cargo ladened aboard her aforesaid, the "Charles Nelson" was exposed to great and imminent danger of contact and collision with the schooner; and by reason of her close proximity to the shore and the condition of the wind and weather at the time, the said "Charles Nelson" was in great danger of a total loss to her owners in effecting the rescue and salving the said schooner "Willis A. Holden," which danger continued during the voyage from the place where said vessel was taken in port at Port Angeles, in which port she was anchored securely.

VII.

That had it not been for the services so rendered to the said schooner "Willis A. Holden" and her cargo, she would in consequence of her injuries aforesaid and the perilous position in which she was by reason thereof and of the gale of wind and heavy sea prevailing at the time, have been wholly lost and destroyed, together with her cargo; that said schooner "Willis A. Holden" is now lying at Port Blakeley, within this District.

VIII.

That these libelants, by reason of the services rendered as aforesaid, deserve and are justly entitled to meet and competent salvage and to so much as has been and is usually allowed by this Court to persons performing like services, and all charges and expenses attending the same; that they have suffered

the said schooner and her cargo to remain in the hands of the owners thereof and have applied to said owners for reasonable and proper salvage, which these libelants aver would amount to \$30,000, but the said Globe Navigation Company, although in possession of said schooner and cargo and the proceeds thereof, have refused and still do refuse to make any reasonable offer of allowance of salvage aforesaid.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against said schooner "Willis A. Holden," her apparel, sails, furniture, tackle, etc., and against the cargo and proceeds thereof in the hands of the Globe Navigation Company, and that all persons having any interest therein, and especially the said ——— Sauer, master, may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree such a sum of money or proportion of the value of said schooner "Willis A. Holden" to be due to the libelant, to wit: The sum of thirty thousand dollars (\$30,000) as a compensation for its salvage services, as shall seem meet and reasonable, together with costs and expenses in this behalf sustained, and that said schooner may be condemned and sold together with her cargo, to pay

the same, and that the libelant may have such other and further relief as in law and justice they may be entitled to receive.

CHARLES NELSON CO.,
By KERR & McCORD,
Proctors for Libelant aforesaid.

State of Washington,
County of King,—ss.

E. E. Caine, being first duly sworn, deposes and says: That he is the general agent of The Charles Nelson Company, the above-named libelant; that the said company is a foreign corporation incorporated by and under the laws of the State of California with its principal place of business in the City of San Francisco in said State; that the officers of said Company are now absent from this District; that deponent has read the foregoing libel; that he is specially instructed as to the contents thereof, and that the facts set forth therein are true according to the best of his knowledge, information and belief.

E. E. CAINE.

Subscribed and sworn to before me this 10th day of January, A. D. 1908.

E. McCORD,

Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Libel. Filed in the U. S. District Court, Western Dist. of Washington. January 10, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The "WILLIS A. HOLDEN," Her Tackle, Ap-
parel, Furniture, etc.,

Respondents.

Stipulation for Costs.

Whereas, a libel was filed in this court on the 10th day of January, A. D. 1908, by The Charles Nelson Company, a corporation, against the sailing schooner "Willis A. Holden," her tackle, apparel, furniture, etc., for reasons and causes in the said libel mentioned, and the said The Charles Nelson Company, and E. E. Caine and W. C. Dawson, its sureties, parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of said libelant or its sureties, execution may issue against their goods and chattels and lands for the sum of Five Thousand Dollars (\$5,000);

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the undersigned shall be, and each of them is hereby bound in the sum of Five Thousand Dollars (\$5,000), conditioned that the libelant above named shall pay all costs and charges that may be awarded

against it in any decree by this Court, or in case of appeal by the Appellate Court.

THE CHARLES NELSON COMPANY,

By KERR & McCORD,

Its Proctors.

E. E. CAINE and

W. C. DAWSON,

Sureties.

State of Washington,
County of King,—ss.

E. E. Caine and W. C. Dawson, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of Five Thousand Dollars (\$5,000) over and above all his debts and liabilities and in statutory separate property.

E. E. CAINE.

W. C. DAWSON.

Subscribed and sworn to before me this the 10th day of January, A. D. 1908.

[Seal]

S. H. KERR,

Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Stipulation for Costs. Filed in the U. S. District Court, Western District of Washington. Jan. 10, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

United States District Court for the Western District of Washington.

No. 3617.

CHAS. NELSON CO.

vs.

Schr. "WILLIS A. HOLDEN."

Appearance [for Claimant].

To the Clerk of the Above-entitled Court:

You will please enter my appearance as proctor for claimant in the above-entitled cause; and service of all subsequent papers, except writs and process, may be made upon said claimant, by leaving the same with

GEO. H. KING,

H. R. CLISE,

Proctors for Claimant.

Office: Address 400 & 401 Globe Block, Seattle, Washington.

[Endorsed]: Appearance. Filed in the U. S. District Court, Western District of Washington. Jan. 15, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. —.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber Consisting of About 1,500,000
Feet, Board Measure of the Value of About
\$15,000,

Claimant.

Claim [of the Globe Navigation Company].

Comes now the Globe Navigation Company, Lim-
ited, of Washington, and says that it is the lawful
bailee of said schooner "Willis A. Holden," her
tackle, apparel, furniture, and of her cargo, and that
it claims same for the respective owners thereof.

And further says that the Globe Navigation Com-
pany, Ltd., of Washington, is the lessee and oper-
ator, and is entitled to possession of said Schooner
"Willis A. Holden," her tackle, apparel, and fur-
niture and cargo, and that the Globe Navigation
Company of Newark, New Jersey, a corporation, is
the true and bona fide owner of said schooner, and
that no other person is the owner thereof.

And further says the consignee of said cargo, ac-
cording to the bill of lading, is Bowring & Company,

16 *The Globe Navigation Company, Limited,*
Shanghai, China. And that said claimant is informed and believes that certain other parties have some interest in said cargo, but the names of these parties and the amount of their interest is not known to said claimant, the Globe Navigation Company, Ltd., of Washington, and that said claimant claims said cargo for the benefit of any and all parties interested therein.

And further says that the said schooner and the goods of her lading at the time of shipment and alleged salvage did belong to the persons and corporations herein above named, and that this claimant is informed and verily believes that the same, if restored, will belong to the same persons and no others, as said claimant has reason to believe and does believe.

And said claimant prays restitution of said schooner, her tackle, apparel, and furniture and of her cargo to the persons entitled as herein set forth.

THE GLOBE NAVIGATION COMPANY,
LTD., OF WASHINGTON,

By G. F. THORNDYKE,
Manager.

G. H. KING and
H. R. CLISE,

Proctors for Claimant, 401 Globe Block, Seattle, Wash.

United States of America,
Western District of Washington,—ss.

G. F. Thorndyke, being first duly sworn, on his oath deposes and says: That he is manager of the

Globe Navigation Company, Ltd., of Washington, claimant above named; that he is authorized to make this affidavit by said claimant, and makes same for and in behalf of said claimant; and that the matters and things stated in said claim are true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes them to be true.

G. F. THORNDYKE.

Subscribed and sworn to before me this 15th day of January, 1908.

GEO. H. KING,

Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Claim. Filed in the U. S. District Court, Western District of Washington, January 15, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libellant,

vs.

The Schooner "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber Consisting of About 1,500,000 Feet, Board Measure of the Value of About \$15,000,

Claimant.

Stipulation [for Costs—Filed January 15, 1908].

Whereas a libel was filed in this court on the 10th day of January by The Charles Nelson Company, a corporation, against the schooner "Willis A. Holden," her tackle, apparel, and furniture and her cargo, for the causes and reasons in said libel mentioned, and praying that the same be condemned and sold to answer prayer of libelant;

And whereas, a claim has been filed in said cause by the Globe Navigation Company, Ltd., of Washington; the said claimant, and J. W. Clise of Seattle, Washington, as surety, execution for the sum of Two Hundred Fifty Dollars (\$250.00) may issue against their goods, chattels, and lands;

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the undersigned stipulators shall be and are hereby bound in the sum of Two Hundred Fifty Dollars (\$250.00), conditioned that the claimants above named shall pay all costs and expenses that shall be awarded against it by the final decree of this Court, or upon appeal, by the appellate court.

Dated Seattle, Washington, this 15th day of January, 1908.

THE GLOBE NAVIGATION COMPANY,
LTD., OF WASHINGTON,

By G. F. THORNDYKE,

Manager.

J. W. CLISE

United States of America,
Western District Washington,—ss.

J. W. Clise, of the city of Seattle, Washington, party to above stipulation, being first duly sworn, deposes and says, that he resides in Seattle, Washington, that he is worth more than the sum of Five Hundred Dollars (\$500) over and above all of his just debts and liabilities.

J. W. CLISE.

Subscribed and sworn to before me this 15th day of January, 1909.

[Seal]

GEO. H. KING,

Notary Public in and for the United States of America, Western District, Washington, Residing at Seattle.

G. H. KING and

H. R. CLISE,

Proctors for Claimant,

401 Globe Block, Seattle, Wash.

[Endorsed]: Stipulation for Costs. Filed in the U. S. District Court, Western District of Washington. Jan. 15, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3617.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber Consisting of About 1,500,000 Feet,
Board Measure of the Value of About \$15,-
000,

Defendant.

**Stipulation to Take Depositions [of A. Laur and Ed.
Carlson].**

It is hereby stipulated that the depositions de
bene esse of A. Laur, and Ed. Carlson, witnesses on
behalf of the claimants in the above-entitled pro-
ceeding, be taken on oral interrogatories and cross-
interrogatories, before A. C. Bowman, United States
Commissioner, at his office in Seattle, King County,
Washington, on the 15th day of January, 1908, be-
tween the hours of 2:00 P. M. and 4:00 P. M. of said
day, and that the taking thereof may be continued
from day to day, and over Sundays, at the same
place, until completed. And when so taken, the said
depositions may be used on the trial of said action,
subject to the same objections as to the competency

of the witness and the admissibility, materiality, and relevancy of the testimony, as if said witness was personally present and testifying. Said Commissioner shall note any and all objections and exceptions made by either side, but witnesses shall answer all questions propounded notwithstanding any such objection or exception.

Said deposition, when taken, shall be duly attested by said Commissioner, and filed with the Clerk of said Court.

KERR & McCORD,
Proctors for Libelant.

GEO. H. KING and
H. R. CLISE,

Proctors for Respondent and Claimant.

[Endorsed]: Stipulation. Filed in the U. S. District Court, Western District of Washington. Jan. 27, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber Consisting of About 1,500,000 Feet, Board Measure of the Value of About \$15,000,

Defendant.

Amended Libel.

To the Hon. C. H. HANFORD, Judge of the District Court of the United States, in and for the Western District of Washington, Northern Division:

The amended and substituted libel of the Charles Nelson Company, a corporation duly organized and existing under the laws of the State of California, the owners of the steamship "Charles Nelson," the original libel not having at this time been answered unto, for itself and others interested as salvors, against the four-masted schooner "Willis A. Holden," whereof ——— Sauer is master, her tackle, apparel, sails, furniture, etc., and a cargo of lumber landed aboard said schooner, consisting of about 1,500,000 feet, board measure, of the value of about \$15,000, in a cause of salvage, civil and maritime, alleges as follows:

I.

That on or about November 27, 1907, the four-masted schooner "Willis A. Holden," laden with a cargo of lumber consisting of about 1,500,000 feet board measure, and of the value of about \$15,000, departed from Willapa Harbor in the State of Washington, on a voyage to Shanghai, China; that the value of the transportation charges therefor, or freight money, was about \$13,500; that thereafter the said schooner encountered storms at sea and became disabled, the rudder having been carried away, and said schooner drifted in the waters of the Pacific Ocean, and on, to wit, December 12, 1907, was

adrift in the waters of the Straits of San Juan de Fuca, inside of Cape Flattery and near the shore in the vicinity of Neah Bay, at which time her jury rudder had been broken and was floating alongside of said vessel, and she was wholly disabled and unmanageable and was in near proximity to the rocks and reefs, and was flying signals of distress and in great danger of being wholly lost, together with her cargo and freight money to be earned on her voyage, and all thereof, would have been wholly lost to her owners and to the owners of her cargo, but for the services rendered her by the libelant, as hereinafter stated; that at 4:30 o'clock, P. M., on December 12, 1907, a strong gale of wind was blowing and the Straits of San Juan de Fuca were rough and said schooner disabled as aforesaid was wholly unable to have extricated herself from her dangerous position.

II.

That on said last-named date the steam schooner "Charles Nelson" of the burden of 1,057 tons, 750 horse-power, of which the libelant was the owner, was inbound to Seattle on a voyage from the port of San Francisco.

III.

That in response to the distress signals of the schooner "Willis A. Holden" the "Charles Nelson" came up to the said schooner, then being disabled and unmanageable as aforesaid and in imminent peril and in danger of stranding and being lost, and passed a hawser to the said schooner, which was by her officers and sailors attached to her bits, and with great difficulty and hazard to herself and her

officers and owners, towed the said schooner from her place of danger to a safe anchorage at Port Angeles, Washington, about sixty miles distant from the place where said towage began; that in rendering said services the hawser of the "Charles Nelson" was parted on several occasions.

IV.

That said schooner "Willis A. Holden" is owned by the Globe Navigation Company, a New Jersey corporation, and was at the time of her rescue aforesaid and is now of the value of \$70,000 or thereabouts; that she is a wooden four-masted schooner of 1,188 gross tons and 1,040 net tons; that her cargo consisted of about 1,500,000 feet of lumber, board measure, of the value of about \$15,000; that the names of the owners of the cargo or consignees thereof are to this libelant unknown; that her contract for carriage of said lumber was about \$13,500, but that the said cargo is now again aboard said vessel and she is about ready at this time to again proceed to sea.

V.

That the "Charles Nelson" is a steam schooner as aforesaid, of which the libelant is the owner, and was at all times herein mentioned and now is of the value of \$100,000.

VI.

That in rescuing of said schooner and cargo laden aboard her aforesaid, the "Charles Nelson" was exposed to great and imminent danger of contact and collision with the schooner; and by reason of her close proximity to the shore and the condi-

tion of the wind and weather at the time, the said "Charles Nelson" was in great danger of a total loss to her owners in effecting the rescue and salving the said schooner "Willis A. Holden" and her cargo, which danger continued during the voyage from the place where said vessel was taken in port at Port Angeles, in which port she was anchored securely.

VII.

That had it not been for the services so rendered to the said schooner "Willis A. Holden" and her cargo and freight money, she would, in consequence of her injuries aforesaid and the perilous position in which she was by reason thereof and of the gale of wind and heavy sea prevailing at the time, have been wholly lost and destroyed, together with her cargo and freight money; that said schooner "Willis A. Holden" and cargo is now lying at Port Blakeley, within this District.

VIII.

That these libelants, by reason of the services rendered as aforesaid, deserve and are justly entitled to meet and competent salvage, and to so much as has been and is usually allowed by this Court to persons performing like services, and all charges and expenses attending the same; that they have suffered the said schooner and her cargo to remain in the hands of the owners thereof and are entitled to reasonable and proper salvage, which this libelant avers would amount to \$20,000, but the said Globe Navigation Company, although in possession of said schooner and cargo and the proceeds thereof, have

refused and still refuse to make any reasonable offer of allowance of salvage aforesaid.

IX.

That all and singular the premises are, true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against schooner "Willis A. Holden," her apparel, sails, furniture, tackle, etc., and against the cargo and proceeds thereof in the hands of the Globe Navigation Company, and that all persons having any interest therein and especially the said ——— Sauer, master, may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree such a sum of money or proportion of the value of said schooner "Willis A. Holden," her cargo and freight money to be due to the libelant, to wit, the sum of twenty thousand dollars (\$20,000), as a compensation for its salvage services, as shall seem meet and reasonable, together with costs and expenses in this behalf sustained, and that said schooner may be condemned and sold, together with her cargo, to pay the same, and that the libelant may have such other and further relief as in law and justice it may be entitled to receive.

CHARLES NELSON COMPANY,

By KERR & McCORD,

Proctors for Libelant Aforesaid.

State of Washington,
County of King,—ss.

E. E. Caine, being first duly sworn, on oath deposes and says, that he is the Seattle agent of the Charles Nelson Company, the above-named libelant; that the said company is a foreign corporation, incorporated under the laws of the State of New Jersey; that the principal place of business of said company is the city of San Francisco, California, and that the officers of the said company are now absent from this District; that deponent has read the foregoing libel and knows the contents thereof, and that the same is true according to the best of his knowledge, information and belief.

E. E. CAINE.

Subscribed and sworn to before me this 28th day of January, A. D. 1908.

S. H. KERR,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Amended Libel. Filed in the U. S. District Court, Western Dist. of Washington. February 4, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber, Consisting of About 1,500,000 Feet, Board Measure, of the Value of About \$15,000,

Respondents.

Replication to Claim and Answer.

The replication of The Charles Nelson Company, a corporation, libelant, to the claim and answer of the Globe Navigation Company, Limited, a Washington corporation, and the Globe Navigation Company, a New Jersey corporation, lessees and owner of the schooner "Willis A. Holden," respondent above named, alleges that it will aver, maintain and prove its libel to be true, certain and sufficient; and that the said claim and answer of said claimant and respondent is untrue, uncertain and insufficient. In this connection the libelant admits, as charged in the ninth paragraph of the answer, that the schooner "Willis A. Holden" jettisoned 20,000 feet board measure of her cargo, of the value of \$450. That as to whether or not the captain and crew of said

schooner rigged a jury rudder and with its aid navigated said vessel into the Straits of San Juan, this libelant has neither knowledge nor information sufficient to enable it to form a belief and therefore denies said allegation. The libelant denies that on December 12, 1907, or at any time during said day, the sea was calm and the wind light at any position occupied by the said vessel within the Straits of San Juan, or that said vessel was between 4 and 5 o'clock of said day in a sheltered position or at a place where she could have secured safe anchorage or good holding ground. Libelant admits that said vessel, on said day, up to the time she was rescued by libelant, was flying signals of distress and demands for assistance; libelant denies that the master of the "Holden" informed him that he was in a safe position and in no danger, with good holding ground and with ample facilities for anchorage, or that he was desirous of getting to a port where he could repair his rudder, and for that reason only or at all that he stated he would like to be towed from the then position of the "Holden" to Port Townsend, Washington, providing the compensation for such accommodation would be a reasonable towage rate and not a salvage charge. Libelant denies that any agreement was entered into between the captain of the "Holden" and the captain of the "Nelson" for the towage by the "Nelson" of the "Holden" to Port Townsend, and for the charging therefor a fair and reasonable rate for the towage of said vessel, and that such services should be based upon tow-

age rates, and should not be deemed, considered or paid for as a salvage charge; denies that any such understanding or agreement was entered into by and between the captain of the "Nelson" and the captain of the "Holden" with reference to the services to be rendered, or at all; denies that the captain of the "Nelson," while rescuing said vessel, performed the services in a negligent, unskillful and unseamanlike way, or that his vessel was so navigated; denies that the captain of the "Nelson" received instructions of any kind from the captain of the "Holden" with reference to the navigation of the "Nelson" or otherwise; denies the allegations of said paragraph that in passing the tow-line to said "Holden," after the same had parted on three different occasions, that the "Nelson" was not subjected to great danger; admits that the "Nelson" towed said "Holden" to Port Angeles, and left her there in safe anchorage; denies the allegation that the steamer "Nelson" was not put in jeopardy and danger, as alleged in the libel; denies that the services rendered by the "Nelson," either in passing the tow-line or in towing said vessel were rendered in a negligent, unskillful or unseamanlike manner, or that the tow-line at any time parted through the failure of the "Nelson" and her officers to handle her in a skillful and seamanlike manner.

The libelant denies that it has refused to accept fair and reasonable compensation for its services, or that the sum of \$20,000 is an exorbitant and unjust compensation for the services rendered; denies that

there was any agreement between the captains of the "Nelson" and the "Holden" with reference to the said services; admits that the lessee and owner of the "Holden" has heretofore tendered and offered to pay to libelant the sum of \$1,000, which libelant refused to accept.

Libelant denies each and every allegation of affirmative matter contained in said answer and claim not hereinbefore specifically denied; and libelant humbly prays as in its libel it has already prayed.

THE CHARLES NELSON COMPANY,
By KERR & McCORD,
Its Proctors and Attorneys.

United States of America,
Western District of Washington,—ss.

E. E. Caine, being first duly sworn, deposes and says: That he is the resident agent of The Charles Nelson Company, the libelant above named; that he is authorized for and on behalf of said company to make this affidavit; that he has read the foregoing replication and is specially instructed as to the contents thereof, and that the facts set forth therein are true, to the best of his knowledge, information and belief.

E. E. CAINE.

Subscribed and sworn to before me this 4th day of February, A. D. 1908.

S. H. KERR,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Replication to Claim and Answer. Filed in the U. S. District Court, Western Dist. of Washington. February 4, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber, Consisting of About 1,500,000 Feet, Board Measure, of the Value of About \$15,000,

Defendant,

H. SMITH, V. ANDERSON, W. SIRENS, K. KARLSON, B. TUP, O. HOLSTROM, G. GUTENBERG, H. JOSTMAN, A. SUNKWIST, E. EVANS and W. LINE, Sailors; FRANK WESTON, JOHN BABERG and JAMES McCUE, Firemen; EMIL SODERBERG and PAUL H. MOSIER, Oilers; J. WUNDERLICH, Steward; A. J. HOWELL, Cook; C. DAUCHERT, Cook's Boy; ANDREW DOE, Cabin Boy (All Members of the Crew of the Steamer "Charles Nelson"),

Intervening Libelants.

Notice of Appearance [of Proctor for Intervening Libelant].

To the Above-named Libelant and to Messrs. Kerr and McCord, Proctors for Said Libelant and to Messrs. George H. King and H. R. Clise, Proctors for Claimant Herein.

You and each of you will please take notice hereby that the undersigned hereby appears in the above-entitled cause as proctor for the above-named intervening libelants, and demands that copies of all pleadings and papers hereafter filed in said cause be served upon the undersigned as such proctor for said intervening libelants.

J. HENRY DENNING,
Proctor for Intervening Libelants.

We hereby acknowledge receipt of copy of the above notice of appearance, together with a copy of the intervening libel in the above-entitled cause, this 29th day of April, 1908.

KERR & McCORD,
Proctors for Libelant.
H. R. CLISE and
GEO. H. KING,
Per L. STOBBS,
Proctors for Claimant.

[Endorsed]: Notice of Appearance. Filed in the U. S. District Court, Western District of Washington. Apr. 29, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber, Consisting of About 1,500,000
Feet, Board Measure, of the Value of About
\$15,000,

Defendant,

H. SMITH, V. ANDERSON, W. SIRENS, K.
KARLSON, B. TUP, O. HOLSTROM, G.
GUTENBERG, H. JOSTMAN, A. SUNK-
WIST, E. EVANS and W. LINE, Sailors;
FRANK WESTON, JOHN BABERG and
JAMES McCUE, Firemen; EMIL SODER-
BERG and PAUL H. MOSIER, Oilers; J.
WUNDERLICH, Steward; A. J. HOWELL,
Cook; C. DAUCHERT, Cook's Boy; AN-
DREW DOE, Cabin Boy (All Members of
the Crew of the Steamer "Charles Nelson"),

Intervening Libelants.

Intervening Libel.

To the Honorable C. H. HANFORD, Judge of the District Court of the United States in and for the Western District of Washington, Northern Division—In Admiralty.

The intervening libel of H. Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup, O. Holstrom, G. Gutenberg, H. Jostman, A. Sunkwist, E. Evans and W. Line, Sailors; Frank Weston, John Baberg and James McCue, Firemen; Emil Soderberg and Paul H. Mosier, Oilers; J. Wunderlich, Steward; A. J. Howell, Cook; C. Daucher, Cook's Boy; Andrew Dow, Cabin Boy; each and all members of the crew of the steamer "Charles Nelson" on the voyage hereinafter mentioned, for themselves as salvors against the four-masted schooner "William A. Holden," whereof ——— Sauer, is master, her tackle, apparel, sails, furniture, etc., and a cargo of lumber laden aboard said schooner consisting of about 1,500,000 feet, board measure, of the value of about \$15,000.00, for a cause of salvage, civil and maritime, alleges as follows:

I.

That on or about the 27th day of November, 1897, the said four-masted schooner "Willis A. Holden," laden with a cargo of lumber consisting of about 1,500,000 feet, board measure, and of the value of about \$15,000, departed from Willapa Harbor, in the State of Washington, on a voyage to Shanghai,

China; that the value of the transportation charges therein or freight money was about \$13,500.00; that thereafter the said schooner encountered storms at sea and became disabled, the rudder having been carried away, and said schooner drifted in the waters of the Pacific Ocean, and on, to wit, the 12th day of December, 1907, was adrift in the waters of the Straits of San Juan de Fuca, inside of Cape Flattery and near the shore in the vicinity of Neah Bay, at which time her jury rudder had been broken and was floating alongside of said vessel, and she was wholly disabled and unmanageable and was in near proximity to the rocks and reefs and was flying signals of distress and in great danger of being wholly lost, together with her cargo and freight money to be earned on her voyage, and all thereof would have been wholly lost to her owners and to the owners of her cargo but for the services rendered by the intervening libelants as hereinafter stated; that about 4:30 o'clock P. M. on said 12th day of December, 1907, a strong gale of wind was blowing, and the Straits of San Juan de Fuca were very rough and the said schooner, disabled as aforesaid, was wholly unable to extricate herself from her said dangerous position.

II.

That on said 12th day of December, 1907, at about 4:30 in the afternoon of said day, these intervening libelants were members of the crew of the steamer "Charles Nelson," and at said time the said steamer "Charles Nelson" was in the Straits of San Juan

de Fuca on a voyage between the ports of San Francisco and Seattle, and at the time said schooner "Willis A. Holden" was in such dangerous position as herein set forth, said steamer "Charles Nelson" fell in with her in the vicinity of said Neah Bay.

III.

That in response to the signals of distress made by said schooner "Willis A. Holden" the said steamer "Charles Nelson," with your intervening libelants as the crew thereof, came up to the said schooner then being disabled and unmanageable as aforesaid and in imminent peril and in danger of stranding and being lost, and the said intervening libelants as the crew of said steamer passed a hawser to said schooner, which was by the officers and sailors of said schooner attached to her bitts. That with great difficulty and hazard the said schooner was towed from her said place of danger to safe anchorage at Port Angeles, Washington, and about 60 miles distant from the place where the towage began. That in rendering the service of towing said vessel to said place of safety the said hawser parted several times and it became necessary for your intervening libelants to risk their lives and to risk the danger of great bodily injury and death in the passing of said hawser several times from said steamer "Charles Nelson" to said schooner "Willis A. Holden."

IV.

That said schooner "Willis A. Holden" is owned by the Globe Navigation Company, a New Jersey corporation, and was at the time of her rescue as

aforesaid, and is now of the value of \$70,000.00 or thereabouts; that she is a wooden four-masted schooner of 1188 gross tons and 1040 net tons; that her cargo of lumber consisted of about 1,500,000 feet, board measure, and of the value of about \$15,000.00; that the names of the owners of the cargo or consignees thereof are to your intervening libelants unknown; that her contract for carriage of said lumber was about \$13,500.00.

V.

That in rendering the services above mentioned to the said schooner "Willis A. Holden," your intervening libelants, as members of the crew of the steamer "Charles Nelson," took great risk and were in constant danger of death or great bodily injury, but that, notwithstanding such risk and hazard on the part of your intervening libelants, the said schooner was secured at safe anchorage at said Port Angeles, Washington, and that but for the services so rendered to said schooner she would, in consequence of her injuries and her perilous position and the gale of wind and heavy sea prevailing at the time, have been wholly lost and destroyed, together with her said cargo and freight money.

VI.

That your intervening libelants, by reason of the services rendered as aforesaid, deserve and are justly entitled to meet and competent salvage for such services, and to so much as has been and actually is allotted by this Court to persons doing and perform-

ing like services, with all charges and expenses attending the same.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your intervening libelants pray that process in due form of law, according to the course of this Honorable Court, in the cases of admiralty and maritime jurisdiction, may issue against the said schooner, her tackle, apparel, furniture, etc., and against the cargo laden therein, and that all persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree such a sum of money or proportion of the value of said schooner "Willis A. Holden" and her cargo to be due to your intervening libelants as salvors as a compensation for their salvage services as shall seem meet and reasonable, together with the cost and expenses in this behalf sustained, and that said schooner, her tackle, apparel, furniture, etc., and the cargo laden therein may be condemned and sold to pay the same, and that your intervening libelants may have such other and further relief as in the law and justice they may be entitled to receive.

J. HENRY DENNING.

Proctor for Intervening Libelants.

United States of America,
Western District of Washington,
County of King,—ss.

J. Henry Denning, being first duly sworn, upon his oath deposes and says: That he is the proctor for the intervening libelants named in the foregoing intervening libel; that he has read the above and foregoing intervening libel, knows the contents thereof and believes the same to be true. That he makes this affidavit upon information and belief and for the reason that none of said intervening libelants are within the District, and for the further reason that he is authorized by said intervening libelants to file said intervening libel and to make this affidavit.

J. HENRY DENNING.

Subscribed and sworn to before me this 29th day of April, 1908.

H. D. ALLISON,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Intervening Libel. Filed in the U. S. District Court, Western Dist. of Washington, April 29, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

[**Depositions of James McCue et al.**]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

THE CHARLES NELSON CO.,

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," etc., and
Cargo,

Respondent.

Be it remembered, that on Wednesday, April 1st, 1908, pursuant to stipulation of counsel hereunto annexed, at the office of Messrs. Frank & Mansfield, Room 1212 Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, James P. Brown, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., James McCue, John Wonderlick, Axel Lindgren, F. F. Sheppard, R. D. Macrea, L. C. Hansen and John Ranselius, witnesses produced on behalf of the libelant.

Nathan H. Frank, Esq., of the firm of Messrs. Frank & Mansfield, appeared as proctor for the libelant, and William Denman, Esq., appeared as proctor for the respondent and claimant, and the said witnesses, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(Deposition of James McCue.)

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of James McCue, John Wonderlick, Axel Lindgren, F. F. Sheppard, R. D. Macrae, L. C. Hansen and John Ranselius, may be taken de bene esse on behalf of the libelant, at the office of Messrs. Frank & Mansfield, Room 1212 Merchants Exchange Building, San Francisco, California, on Wednesday, April 1st, 1908, at the hour of 2 o'clock P. M., before James P. Brown, a United States Commissioner for the Northern District of California, and in shorthand by Clement Bennett.

It is further stipulated that the depositions, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said depositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.)

[Deposition of James McCue, for Libelant.]

JAMES McCUE, called for the libellant, sworn.

Mr. FRANK.—Q. What is your name?

A. James McCue.

Q. What is your business?

A. Fireman—steamship fireman.

(Deposition of James McCue.)

Q. You were a fireman on board of the steamer "Charles Nelson" at the time she picked up the "Holden"? A. Yes, sir.

Q. In your position as fireman where were you? In what part of the vessel?

A. At that time I was just coming off watch, at 4 o'clock in the afternoon.

Q. When you say you were just coming off watch what do you mean? Did you come on deck?

A. I came on deck at that time.

Q. Where did you go?

A. It was plenty cold at the time, and my being warm I came on deck and went down below to my room again.

Q. How long did you remain down below?

A. I remained down there about until supper-time, half-past 5.

Q. And where did you go then?

A. I came up on deck then. We had the vessel in tow.

Q. You had the vessel in tow? A. Yes, sir.

Q. At the time that you came up will you state whether or not they had had her in tow any length of time or just starting up?

A. They had her in tow some time; they had the lines made fast and they had her in tow sometime. It was cold, and I was warm.

Q. What was the condition of the weather when you came on deck and found them towing that vessel?

(Deposition of James McCue.)

A. It was blowing pretty fresh, and choppy at the time.

Q. In which direction?

A. I should think it was from the southeast or round that way. I am not sure about the weather.

Q. Did you go down on watch again?

A. I came down below—not on watch. I went down below.

Q. You were on watch during that night, weren't you? A. From 12 to 4, midnight.

Q. State what you know about the condition of the weather and the towing of that vessel during that time?

A. We were going along about three quarters speed, not going her full speed, and we had her in tow right along. About one o'clock or round that way the tow-line carried away, and we were getting bells all night until I went off at 4 o'clock in the morning. They had a terrible time getting the tow-line made fast.

Q. Did you hear anything pass between the Captain of the "Holden" and the captain of the "Charles Nelson" concerning the work that he had done?

Mr. DENMAN.—At what time?

Mr. FRANK.—He will fix the time.

A. I did.

Q. What did you hear?

Mr. DENMAN.—When was this?

Mr. FRANK.—I will have to ask you Mr. Denman to leave the witness alone. I will examine him and

(Deposition of James McCue.)

you will have a chance to cross-examine him and fix any time you want to if I don't fix it.

Mr. DENMAN.—The trouble is this: a man goes on to testify to an elaborate conversation that is not within the *res gestae*, and it may necessitate an elaborate cross-examination. We are entitled to know when this conversation occurred.

Mr. FRANK.—Yes, but I must be allowed to examine the witness in my own way, and to get it consecutively, and I shall insist upon that.

Mr. DENMAN.—You have no right to unless you follow the rules of evidence. We ought to know when this conversation occurred and where.

Mr. FRANK.—You can make your memorandum and ask the witness when your turn comes.

Mr. DENMAN.—Q. When was it that this occurred?

Mr. FRANK.—I object to your interfering with my examination. You shall have the opportunity to examine the witness fully when your turn comes. It may be that when I am done you may not have to do it. At the same time I do not propose to have you dictate to me the manner of my examination.

Mr. DENMAN.—I will not.

Mr. FRANK.—Read the question, Mr. Reporter.
(The Reporter reads the question.)

A. I did.

Q. What was it?

A. The last time that the tow-line carried away we backed up to her as close as we possibly could get, and our captain said, "It was a terrible night

(Deposition of James McCue.)

last night, Captain.” “Yes,” he says, the captain of the “Holden”—“it was one of the worst nights that I have seen.” He says, “You need never mind now, I will take the two towboats and take me in.” “Oh, no,” says our Captain, “take my tow-line. I will take you in, and you can bend on all my broken lines.” He did not use the word “broken,” “all my lines, and I will take them aboard, and will get you in.”

Q. Where were the vessels at that time?

A. They were off Port Angeles.

Q. That was just before you went into Port Angeles to anchor the vessel? A. Yes, sir.

Mr. DENMAN.—Do not lead the witness. There has been no testimony about Port Angeles.

Mr. FRANK.—That is all. Take the witness.

Cross-examination.

Mr. DENMAN.—Q. You say that you heard this conversation after the second time that the tow-line broke; that is correct, is it?

A. I heard this conversation while I was on deck, the last time that the tow-line broke.

Q. Did it break three times or twice?

A. It broke three times during the night. This was in the morning.

Q. You did not see those lines break, yourself. You were below?

A. I see this one break the last time.

Q. After that this conversation occurred?

A. Yes, sir.

(Deposition of James McCue.)

Q. Where were the two boats at the time the conversation occurred? A. At Port Angeles.

Q. And where was the "Holden" with reference to the "Nelson"?

A. She was shearing right across our stern, going across the Sound. Our Captain says, "Hoist your jib." The captain of the "Holden" answered back, "I cannot hoist the jib; our bobstays are carried away."

Q. Where were you standing at that time?

A. On the top deck, close to the mess-room.

Q. How many decks has she?

A. The main deck and top deck.

Q. Is the main deck an inside or exposed deck?

A. The main deck is a flush deck fore and aft, with no obstructions in it at all except the top deck that is built in the center of the ship.

Q. The top deck is above the main deck?

A. Yes, sir.

Q. Do I understand that the main deck takes the lumber cargo?

A. Yes, sir, the top deck does not carry nothing.

Q. Is that on top of the deck house?

A. The living quarters.

Q. Your deck is on top of the deck house?

A. On top of the main deck.

Q. You were standing on this top deck at that time? A. Yes, sir.

Q. You heard this conversation?

A. Yes, sir.

Q. You say at that time the "Holden" was drifting astern of the "Nelson," is that correct?

(Deposition of James McCue.)

A. She was sheering across the Sound in an opposite direction from the "Nelson."

Q. Which way? Towards the Vancouver side?

A. She was sheering towards the Vancouver side.

Q. Bow in that direction? A. Yes, sir.

Q. How close was she to you at that time?

A. The full length of the cable. It might have been 180 fathoms of cable.

Q. At that time this conversation occurred?

A. The conversation occurred when we were closer.

Q. How did you get that distance apart? You say at this time that you are speaking of you were 180 fathoms apart?

A. Not at the time we are speaking of.

Q. What distance were you apart at that time?

A. After backing around and coming around to catch the tow-line again, or give them our tow-line again.

Q. How did you get up to them?

A. Sheared round, and swung round and got back.

Q. How did you do? Did you turn to starboard or port when you came around?

A. We turned to starboard.

Q. You made a complete circle and came up on the side?

A. Yes, sir, came up on her starboard side, and backed down to her bow.

Q. The purpose of backing down was to avoid collision, is that it?

(Deposition of James McCue.)

A. To get within throwing distance of the heaving line.

Q. When you came back that time you came back so that your stern was before the bow of the "Holden," and you heaved a line across, and gave your hawser to them. Is that the situation?

A. The situation was, when the line carried away she was swinging off to port, and we were to starboard, and when the line carried away we made the complete turn then. We had to keep turning round to haul in our line. If we backed, the broken line would get into our wheel.

Q. By the way you made your circle around had you got the line aboard then?

A. After we made the circle around we heaved the heaving line on board to them.

Q. At that time you had pulled in the parted hawser? A. Yes, sir.

Q. Where had the hawser parted? On your vessel or theirs?

A. It had parted between the vessels.

Q. In what direction was the wind blowing at this time?

A. I cannot say at that time how the wind was blowing. It was pretty choppy on the Sound at this time. We could not go alongside. It was too rough.

Q. A north wind?

A. It was blowing right across the Sound; a kind of a choppy sea.

(Deposition of James McCue.)

Q. Blowing across from the American to the Vancouver shore?

A. It seemed to be that way. The sea was coming down.

Q. The wind was blowing from the American to the Vancouver shore?

A. It was coming across from the Vancouver shore towards the American shore. It looked that way.

Q. At that time? A. Yes, sir, at that time.

Q. What time was it?

A. This was around somewhere about 10 o'clock.

Q. 10 o'clock in the morning?

A. Yes, sir. It was in the forenoon sometime.

[Deposition of John Wonderlick, for Libelant.]

JOHN WONDERLICK, called for the libelant, sworn.

Mr. FRANK.—Q. What is your full name?

A. John Faydor Wonderlick.

Q. What is your age?

A. 33 at the end of May of this year.

Q. What is your occupation?

A. Cook and steward.

Q. How long have you been going to sea?

A. Since 1895.

Q. Were you ever employed on the Puget Sound?

A. Yes, sir.

Q. In what capacity, and on what vessels?

A. I have been on the towboat "Illwaco," and on the towboat "Magic."

(Deposition of John Wonderlick.)

Q. Any other?

A. The other ones were only a few days once in awhile.

Q. How long have you been engaged in the tow business? A. Almost two years.

Q. During that service did you frequently go in and out to sea with those towboats?

A. We went not further than Umatilla lightship.

Q. When I say to sea, I mean out through the Straits of Fuca, out to the mouth of the Straits. Umatilla lightship is outside of the Straits?

A. Just outside; that is as far as the towboat company goes to let go of a ship that goes to sea.

Q. Outside of Tatoosh? A. Yes, sir.

Q. Were you on the "Charles Nelson" at the time that the "Holden" was picked up by the "Charles Nelson"? A. Yes, sir.

Q. Where were you when the "Holden" was first approached?

A. I don't understand that word "approached."

Q. When you first saw the "Holden"?

A. I was inside the dining-room preparing for supper.

Q. Did you come out?

A. The minute that I heard a ship in distress was sighted I came out immediately.

Q. Where did you go?

A. I came right out on deck and took the field glass, and looked for it, and I see the "Willis H. Holden," with its distress signals up ahead of us.

Q. How long did you stay there?

(Deposition of John Wonderlick.)

A. I stayed there until the ship was properly made fast, and until we were towing her.

Q. What was the condition of the sea at that time when you first came up to the "Holden" at that place?

A. There was a nice fresh breeze, and a good swell on.

Q. A nice swell? A. Yes, sir.

Q. What do you mean by a nice swell?

A. A kind of a heavy swell.

Q. Which way was the swell coming?

A. I cannot say directly which way the swell was coming. I know we went around the "Holden" and I seen the sea wasn't over the rail on one side of the "Holden."

Q. What do you mean by a nice fresh breeze?

A. More breeze than usual.

Q. More breeze than usual? A. Yes, sir.

Q. What kind of a wind had you had up to that time before you got into the Straits?

A. I cannot well remember. I think that we got a good fresh breeze all along.

Q. You don't remember? A. Not exactly.

Q. Is that what you mean by a nice fresh breeze, what you had on—

A. What I mean by a fresh breeze is what you say in San Francisco "a good wind blowing," a wind that you can sail a boat in a good quick way.

Q. Your business is that of Steward?

A. I was steward on the "Charles Nelson" at the time it picked up the "Holden."

(Deposition of John Wonderlick.)

Q. So you do not know anything about the navigation of the vessel, is that right?

A. I have not studied although I have been before the mast. I was in the navy in Germany before the mast.

Q. Do you know anything about the nature of the holding ground for anchorage at the place that you found the "Holden"?

A. I know the place where we found the "Holden" is considered a bad anchoring ground because there are vessels there that anchored before, and they had to take them off.

Mr. DENMAN.—That is, of your own knowledge, what you saw. Do not tell anything about what you heard.

A. I know that the vessels that tried to anchor there, the anchor would not hold.

Mr. FRANK.—Q. I suppose after the vessel had begun towing you went down about your business?

A. Yes, sir, I prepared the supper, and we served the supper.

Q. And in the night-time after you got done with your supper you went to bed?

A. We went to bed later on. I went out once at night. I heard that the line was parted and the ship was doing work out there, and they said, "It is fast again." I did not get out but went to bed.

Q. And you did not come out again until the next morning when it was time to get breakfast?

A. I came out again at 4 o'clock the next morning.

(Deposition of John Wonderlick.)

Cross-examination.

Mr. DENMAN.—Q. What occupation were you engaged in on these towboats?

A. I was cook and steward on the towboats.

Q. Were you ever occupied in any other capacity on board ship in Puget Sound?

A. I was before the mast in training ships.

Q. In Puget Sound? A. Yes, sir.

Q. What ships?

A. The "Thomas B. Amy."

Q. What other ship have you been on?

A. I have been on several small schooners.

Q. You said something about the anchorage in Puget Sound. Were you on this vessel that you are speaking of that had some experience with the anchorage there?

A. We had experience with the towboat "Illwaco."

Q. You were then steward on that boat?

A. I was steward on that boat, and at the same time, deckhand.

Q. Why were you trying to anchor there?

A. It was too bad weather, and we had two fishing barges in tow, and we could not proceed and make any headway so the Captain of the "Illwaco" tried to put one barge at anchor.

Q. Did you have anything to do with that yourself?

A. Yes, sir, I was on the barge that day.

Q. What was the name of the barge?

A. Those barges have no names.

(Deposition of John Wonderlick.)

Q. What did you do?

A. We threw the anchor away and tried to fasten the anchor, and it would not hold, so we picked up our barge and towed her inside the Bay.

Q. Inside of what Bay?

A. Clallam Bay.

Q. How far did you have to tow to get into Clallam Bay from where you tried the anchor?

A. About two or three hours. I cannot say exactly. That was about five years ago now.

Q. How much did your tug draw? How many feet? A. I cannot say.

Q. 10 feet of water?

A. I don't know what she would draw; she was a light steamer.

Q. Do you think she would draw as much as 10 feet?

A. She must draw more than 10 feet, because she was a good size.

Q. Where were you taking these two scows from?

A. We were towing them up and down the fishing grounds.

Q. Whereabouts are the fishing grounds?

A. It was down all the way from Fairhaven, all over the Sound.

Q. Where had you been towing from on this particular occasion when you wound up in Clallam Bay?

A. We came with firewood out of Neah Bay.

Q. Where was it you struck this rough weather?

A. Just when we came out it was starting to get rough.

(Deposition of John Wonderlick.)

Q. What did you do. Put back into Neah Bay again?

A. No, sir, we were monkeying around all night, and the Captain could not make no headway.

Q. You finally put into Clallam Bay?

A. Yes, sir.

Q. You got down that far? A. Yes, sir.

Q. Where was it that you tried your anchorage?

A. Just about exactly where we saw the "Willis A. Holden."

Q. I am asking you where it was, whereabouts on the coast?

A. It was on the American shore.

Q. Whereabouts?

A. It is a small island in front of a bay, I cannot recollect exactly the place.

Q. From there you went to Clallam?

A. Yes, sir.

Q. And towed into Clallam, and there found quiet weather? A. Yes, sir.

Q. Why didn't you put into Neah Bay?

A. The wind came in from sea right into the straits.

Q. Neah Bay, as I understand it, is protected from the sea side?

A. So is Clallam Bay.

Q. Were you nearer to Clallam Bay than to Neah Bay? A. We came out Neah Bay.

Q. I am asking you if you were nearer to Clallam Bay than to Neah Bay? That is the reason you went into Clallam Bay?

(Deposition of John Wonderlick.)

A. We went into Clallam Bay because the Captain found it convenient to get in there. I did not know what reason he got for it. If I see the land I can make out the land at different spots on the shore.

Q. What did you have on these barges?

A. Firewood. The vessel I was on was burning wood.

Q. This was wood for burning—

A. In our own steamer.

Q. Do you know what ground tackle the “Holden” had?

A. I don’t understand you.

Q. Do you know what anchors, what means for mooring the boat she had?

A. She had patent anchors.

Q. The “Holden” had?

A. The “Holden” had patent anchors.

Q. Do you know how many?

A. I cannot correctly say. I know I see one of them.

Q. Do you know what the total weight was of her holding-tackle? A. No, sir.

Q. By the way; have you made any claim against the ship “Holden” for salvage?

A. I have not directly myself.

Q. Have you made any claim through an attorney or agent?

A. The Sailors’ Union made us sign our name, that is all I know.

Q. You expect that if there is any salvage for you you will collect it through the Sailors’ Union?

(Deposition of John Wonderlick.)

A. Yes, sir.

Q. Who is acting as your attorney there—Mr. Hutton? A. I don't know.

Q. But they have secured some attorney to look out for your interests, is that it? A. Yes, sir.

Q. Is that true of all the other sailors on the vessel?

A. I don't know. There is only one man, and I did not see him yet since the day that he asked me to sign my name.

[**Deposition of Axel Lindgren, for Libelant.**]

AXEL LINDGREN, called for the libelant, sworn.

Mr. FRANK.—Q. You are one of the crew of the "Charles Nelson"? A. Yes, sir.

Q. And were at the time she picked up the "Holden"? A. Yes, sir.

Q. What position did you occupy?

A. I was a sailor.

Q. Were you on deck at the time that you picked up the "Holden"?

A. Yes, sir, I was trimming the lamps at the time that we picked her up; I got out on deck at the same time when we hauled alongside of her.

Q. Before that what were you doing?

A. I was just doing handiwork around the deck.

Q. Were you on deck when your vessel came around Tatoosh? A. Yes, sir.

Q. What was the condition of the sea when you came around?

(Deposition of Axel Lindgren.)

A. At the time when we first picked her up the sea was running in here but we were not in so very heavy sea at the time, not so very heavy, but the wind was blowing out from this Strait, and she was laying crossways to the wind, drifting towards the entrance of the Straits, and she had her mizzen hauled back, and the mainsail she had to the wind.

Q. At the time that you came up to her what happened between the two captains?

A. The captain of the "Charles Nelson" asked if he wanted any assistance; he said yes, he wanted it. So at the time we went round and made our hawser ready that we had down at the hole. We hove that up and went alongside of her again. We tried to pass the heaving-line for the crew of the "Holden" to get hold of to haul the hawser on board.

Q. How long were you in getting your line aboard?

A. I should say about close on to an hour.

Q. Did you hear any more conversation between the captains?

A. No, sir, not any more except he asked the second time—our captain asked him if he wanted a tow, and he said "yes"—the captain of the schooner.

Q. You did not hear any more?

A. No, sir.

Q. After you got hold of her and began towing her what happened during that night?

A. She was hard to tow with any speed because she was going crossways, sheering from one side of

(Deposition of Axel Lindgren.)

our stern to the other, because they were not able to make any steerage of the schooner.

Q. What was the matter with the schooner?

A. She lost her rudder.

Q. Did you notice what she had there in her stern, if she had any jury-rigged?

Mr. DENMAN.—Do not lead him.

A. Yes, sir, she had a jury-rigged, but that was all drifted apart and was laying on the lee side of her so that they could not use that for a steering-gear.

Mr. FRANK.—Q. What happened next? Were you on deck all night?

A. I went to bed and was to bed about two hours, and we got called out again when the hawser carried away. That was about one o'clock, or we were called out before one, rather.

Q. That was in the night-time?

A. That was in the night-time.

Q. How with reference to being dark or otherwise?

A. Dark and kind of rainy or snowy and blowing hard at that time.

Q. Proceed.

A. And still was increasing. I was on deck all the remainder of the night afterwards.

Q. Still was increasing during the night?

A. Yes, sir.

Q. After the hawser parted what did you do?

A. We hauled round again and got up to her, tried to find her. We kind of lost her at the time.

(Deposition of Axel Lindgren.)

We picked her up again. They were heaving our hawser aboard, and we passed the 6-inch line to them.

Q. When you say they were heaving your hawser aboard you mean that they were taking the end of the hawser that had been broken?

A. Taking in the end that had been broken in our vessel, broken close to our stern, so that the biggest part was hanging on to the schooner "Holden."

Q. The schooner "Holden" was heaving that in?

A. They were heaving it with their donkey.

Q. In the meantime you were passing them the 6-inch line to hold them?

A. Yes, sir, until they got in shape again.

Q. What happened next?

A. After we got the hawser in we were towing slow with a 6-inch line, and she crossed our stern again, so that it got underneath her bow and it carried away—our 6-inch line carried away.

Q. What happened then?

A. We hove around again and got alongside of her to get the towing-hawser aboard of her; we got it aboard, made it fast to our towing-bitt and started in to tow her again.

Q. How long did that take? About what time did that happen?

A. Close on to 5:30 or 6 o'clock, when it carried away again.

Q. Where were you when it carried away that time?

A. That is the time when we were close to this—I don't remember what they call it—we were close to the British shore at that time.

(Deposition of Axel Lindgren.)

Q. You do not know what they call the place?

A. I don't remember what point it was. I was standing up at the lead at that time when they passed it aboard again.

Q. Did you have the lead?

A. I hove the lead every 5 minutes.

Q. Did you get any bottom?

A. No bottom.

Q. What kind of a line did you have?

A. A hand-lead, just about 30 fathoms of line or 35. There was no bottom to it.

Q. During this time what was the state of the weather with respect to being thick or otherwise?

A. It was thick and dark. It was dark and rainy, and you could hardly see anything.

Q. Finally you got her up?

A. We got her up.

Q. Where did you get her to?

A. We got her close on towards the American side, and then it carried away. That must have been around 8 o'clock when she carried away again; we were close over to Port Angeles then.

Q. Did you hear any conversation there between the captains?

A. Yes, sir, the captain said he was all right—the captain of the “Holden”; then the captain of the “Nelson” says, “I have towed you so far, I will tow you safe into shallow water, and you can drop the anchor.” He made the proposition to tow her into Port Angeles.

Q. Was there any other towboat there?

(Deposition of Axel Lindgren.)

A. There was a towboat came alongside. I don't know what agreement they made. At the same time the "Nelson" would not let her lay there and let the towboat take charge of her when he towed her so far.

Q. Did you hear any conversation then between the two captains?

A. No, sir, there was no conversation except he says he was all right and the captain of the "Nelson" said he would tow her to an anchorage.

Q. Did he make any remark about the condition of the weather?

A. Yes, the captain of the "Holden" said, "we had a very bad night of it"; that it was about the roughest weather he had been in for a long time.

Cross-examination.

Mr. DENMAN.—Q. Where were you when you first sighted the "Holden"?

A. When we first sighted her?

Q. Yes.

A. When we first sighted her I should think it would be about—it was kind of thick at the time when we first got into Flattery—it must have been about 3:30. You could not see very far distant. It was about 4:15 when we got up to the "Holden."

Q. About 4:15?

A. Somewhere around 4:15.

Q. Where was she laying then?

A. Laying inside of Flattery, not very far off of the reef there. She was just about laying in our

(Deposition of Axel Lindgren.)

course as we were coming in, that is the course that the "Nelson" was coming in.

Q. Which side of Neah Bay was she on?

A. She was I should think—Neah Bay? She was away outside of Neah Bay. She was nearer to Flattery than to Neah Bay.

Q. You did not think there was any danger of her going ashore there, did you?

A. I think she was in a dangerous position where she was laying, because there is no anchorage in the place she was laying at the time we picked her up.

Q. Do you know how many fathoms of chain she had aboard?

A. I don't know. Regularly they mostly keep—some keep 60 on one anchor and 90 or so on the other.

Q. Do you know how much water there is in that ground between Neah Bay and Cape Flattery?

A. That is different. It might be 40, and it might be 60 or 80 fathoms.

Q. Do you mean to say that if she had say 100 fathoms of chain that there would not be sufficient chain for anchorage there?

A. Not sufficient to hold her in the weather there was at the time we picked her up.

Q. How much chain would she have to have?

A. She would have to have 160, or probably more, to hold her with one anchor, and that she could not do. She could not hold with one anchor with those patent anchors that she had.

(Deposition of Axel Lindgren.)

Q. What direction was the wind blowing when you saw her?

A. The wind was blowing somewhere from east, or east by south—something like that, east south-east. It was pretty near blowing straight out of the Sound.

Q. You say that it was hazy as you approached her. You say they were backing with the mizzen sail?

A. They had the mizzen hauled up to windward.

Q. What tack was she on?

A. On the port tack, if I am not mistaken.

Q. Are you sure of that?

A. I don't remember what tack she was on exactly, but I think she was heading with her stern towards the American side.

Q. And the wind was blowing east southeast. That would bring the wind on her starboard side?

A. She should be on the starboard tack. That I didn't exactly take any notice of, because I came out—I was working in the lamp-locker and I didn't take much notice of it.

Q. Could you tell in that hazy weather whether or not she was making any sternway backing with this sail?

A. Not that I could see; I don't think she was.

Q. You will not swear to that?

A. I could not say whether she did or not. I should not think she would make any sternway with one sail back and the other was drawing. That would make her stand in about the same position to

(Deposition of Axel Lindgren.)

the wind, would not make her go ahead or astern, but go sideways.

Q. As a matter of fact you do not know what did happen? You simply saw the sails in that position?

A. Yes, sir.

Q. You say when they came alongside you went below to prepare the line yourself?

A. Yes, sir, we were all on deck preparing the line. They were all in the lazarette down aft.

Q. In the lazarette aft? A. Yes, sir.

Q. Now you say that after you took hold you continued up the Straits? A. Yes, sir.

Q. When did you go below?

A. I went below about 9 o'clock in the evening.

Q. 9 o'clock that night? A. Yes, sir.

Q. Was the wind still blowing from the south-east?

A. It was increasing. Afterwards it changed around. When I came on deck it had changed and was blowing from the southwest.

Q. Did it continue to blow that way all night?

A. No, sir, it changed some towards the morning, and hauled to the westward.

Q. Did it ever get clean westerly, or did it remain west southwest?

A. That I could not exactly say. I think later in the morning it was hauling some towards the northward, but was still blowing pretty hard. In the night it was blowing southwesterly and with rain and snow and a rough sea at the time.

(Deposition of Axel Lindgren.)

Q. You were on deck until 8 o'clock, and then went below? A. Until 9 o'clock.

Q. When did you come on deck again?

A. We were called out before one o'clock.

Q. How long were you on deck at that time?

A. I stayed on deck until we got her into anchorage.

Q. Sometime along 6 or 7 o'clock in the morning you think the wind shifted toward westerly and northerly?

A. It was shifting some to the west, and in the morning I think was hauling somewhere a little to the northward.

Q. That is when you made anchorage?

A. Before we made anchorage, but we were not in so hard a wind then as we were during the night.

Q. Do I understand you to say that the hard wind was the westerly wind, or the southwesterly wind?

A. The southwesterly wind was the hard wind.

Q. Was it this southwesterly wind that you claim made her veer and cross?

A. They could not manage to do any steerage with it. That is what made her cross our stern so often and carry the hawser away.

Q. When you first started out, as I understand you, the wind was ahead?

A. It was ahead when we first started.

Q. Did you have any trouble towing her then?

A. No, sir, was going along nicely, about three-quarters speed at the time; she was going slowly, just keeping her own—a little headway.

(Deposition of Axel Lindgren.)

Q. How far off shore were you when you picked her up?

A. I should think about a mile and a half.

Q. It was misty at that time?

A. It was kind of thick; you could not see very far distant.

Q. She was not near enough to the shore to be in any danger of running on?

A. She was not far. She would not have very far to drift before she drifted on.

Q. It might be less than a mile and a half then?

A. I could not exactly say; I should judge it was about that distance. It may be a little more. I am not sure of it.

Q. Now, this 6-inch hawser that you put on board—how long did you tow that?

A. I should think it would be somewhere round an hour or a little over.

Q. At that time the wind was still coming from the southwest, and still making this trouble in keeping her head up?

A. Yes, sir, they were just holding on to her that they would not lose her.

Q. In what general direction were you going?

A. Steering right up the Straits, just holding her a little towards the American side, so that she would not drift towards the British side.

Q. How far were you off the American shore at the time that the first hawser broke?

A. I could not say. It was that thick that we could not see nothing. I could not see lights or any-

(Deposition of Axel Lindgren.)

thing. I could not say. She was well over to the American side at that time.

Q. How do you know that the wind was southwest at that time if it was so dark? Did you look at the compass to see?

A. You could look at the compass.

Q. You took the wind across the compass, I suppose? A. Yes, sir.

Q. Now, at the second time that she parted you were still having this trouble from the tow veering from one side to the other? A. Yes, sir.

Q. What occasioned that? The wind on your starboard quarter?

A. The wind was on her starboard quarter.

Q. And that was the cause of the trouble the third time that she parted?

A. Yes, sir; every time that she parted the hawser; the trouble was that she was crossways and we were standing the other way.

Q. That is to say the wind on her starboard quarter would bring her head round to starboard and cross the hawser, and break it off in that way?

A. Yes, sir.

Q. What were you doing when you first sighted her—what were you doing yourself personally?

A. I was trimming the lamps.

Q. Was that below or above?

A. No, sir, that is on deck, just outside, in a little locker outside.

Q. You mean your side-lights?

(Deposition of Axel Lindgren.)

A. No, sir, not the side-lights, the anchor-lights and so on, to have them ready in case we were in need of them.

Q. Did you have charge of all the lamps on the ship?

A. I generally do, that is to say, the oil lamps and signal-lamps.

Q. Did you go below at any time to trim those lamps after you saw the "Holden"?

A. No, sir, I had them trimmed already before we got alongside of her.

Redirect Examination.

Mr. FRANK.—Q. You have spoken about the rough sea during that night. Could you give us an idea of how heavy the swells were by the spray or the manner in which it washed up on your vessel?

A. Well, it was a pretty heavy and choppy sea. We were taking spray over our stern every time we tried to get to the vessel and pass the hawser aboard, that is to say, after one o'clock that night.

Q. How high were you up from the water—about how many feet were you?

A. I should think about 14 feet—14 or 15 feet.

Recross-examination.

Mr. DENMAN.—Q. When you say 14 feet you do not mean to say that the vessel had 14 feet free-board?

A. That is, from the water line on the stern to her rail.

Q. She was shipping sea over that?

(Deposition of Axel Lindgren.)

A. She did not ship sea, but took spray over. It is very seldom that she does ship a very heavy sea.

Q. By the way, you are claiming a portion of this salvage yourself, personally?

Mr. FRANK.—We will stipulate that all of these “Charles Nelson” sailors expect to get something in the way of salvage as their share of this business.

Mr. DENMAN.—Q. You are claiming your share of the salvage? A. Yes, sir.

Q. You have made a claim through your attorney through the Sailors’ Union on the company, haven’t you?

A. They had us up to the Sailors’ Union; I don’t know how it is coming out. I have not been in the affair or anything.

Q. You have turned it over to them?

A. Yes, sir.

Q. They have charge of it for you?

A. Yes, sir.

Q. You expect in due time to get your share of this salvage? A. Yes, sir.

Mr. FRANK.—Just exactly as the Master of the “Holden” expects to get out of paying anything.

[Deposition of F. F. Sheppard, for Libelant.]

F. F. SHEPPARD called for the libelant, sworn.

Mr. FRANK.—Q. What is your business?

A. Chief engineer of the steamer “Charles Nelson.”

Q. You were Chief Engineer at the time of the salvage service rendered to the “Holden”?

(Deposition of F. F. Sheppard.)

A. Yes, sir.

Q. Were you on duty when the "Holden" was first picked up? A. Yes, sir, I was on watch.

Q. Does the Chief stand watch?

A. Yes, sir, he does on that boat. We are carrying three engineers. I had the 4 to 8 watch.

Q. Previous to sighting her, were you on deck when you came in around Tatoosh?

A. Yes, sir, a few minutes to 4; I went on watch at 4 o'clock, and I then, I think, went down below about 10 minutes to 4; at that time it was kind of drizzling and wet, and I did not want to stay in the rain.

Q. Were you on deck when they came around Tatoosh?

A. No, sir, she passed Tatoosh at a quarter past 3. I was not on deck then.

Q. When they sighted the "Holden" were you on deck? A. No, sir, I was down below.

Q. Well, how soon afterwards did you come on deck?

A. At half-past 5 the second assistant relieved me for supper.

Q. So you do not know what the condition of the weather or sea was, or what happened on deck at the time they picked her up?

A. No, sir, only I noticed that when I went down below there was a big swell on from the west, with an easterly wind; it was raining, and I had on thin clothes, and I naturally would not lay round the deck long.

(Deposition of F. F. Sheppard.)

Q. After you went down below you were on watch from what hour?

A. Up until 8 o'clock—from 4 to 8.

Q. Then did you come up on deck?

A. Yes, sir.

Q. How long did you remain?

A. I should think about 15 or 20 minutes, until I saw we were making good headway with the schooner, and everything was going along; I noticed she was low in the water, and waterlogged. At the time I was on watch, at a quarter past 4, when I got the bell, stop and slow bell, I sent the oiler up to see what the trouble was, and he came down and said that we had a disabled schooner and we were going to give her a hawser. It was a schooner in distress.

Q. I do not care what the oiler came down and told you, but just what you did and saw. At any rate at 8 o'clock you found her waterlogged, and went below?

A. It was my watch below and I turned in. I did not go to bed undressed. I lay down with my clothes on because it was such a dirty night. In the position we were in with that disabled ship I knew I would have to get up during the night. At 5 minutes to one, or one o'clock, I heard the bells going ahead in the engine-room; that meant "stop," and I knew then that the hawser had carried away.

Q. What did you do?

A. So I went down to the second assistant to see that everything was all right, and stood by him until we took hold of him again and went on.

(Deposition of F. F. Sheppard.)

Q. About how long did that take?

A. As near as I should judge about an hour and a half somewhere. I was there until 2 o'clock in the morning.

Q. After 2 o'clock where did you go?

A. I went to my room again and lay down until 20 minutes to 4; then it was time to go on watch again.

Q. Then you went on watch and remained how long?

A. I was on until 8 o'clock. In the morning I knew it was blowing harder than the night before. I should say it was a southerly or easterly wind. The wind was from the south. I am not posted on the points of the compass, but I knew the wind was from the south. It was so dark, I looked over the stern to see if I could see anything of the schooner; all I could see was a couple of lights. We were making pretty fair way, what we consider three-quarters speed, about 90 revolutions a minute. That is what a three-quarter speed is.

Q. You say it was dark?

A. Yes, sir. You could not see a thing, but I could see a couple of lights astern of the schooner; I don't know how far she was off. I knew we were holding on to her although I don't think we were making much headway at the time.

Q. Were you at the engine at any time when she parted her hawser?

A. Yes, sir, that morning about half-past 5 or a quarter to 6 it carried away again.

(Deposition of F. F. Sheppard.)

Q. Were you at the engine then?

A. I was at the engine then. I felt a jolt when the line carried away. Then the engine commenced to speed up. She was relieved of her load.

Q. About what speed were you making?

A. About 90 revolutions.

Q. What speed is that?

A. Three-quarters speed; 120 revolutions is full speed.

Q. How long had you been going that way before this hawser parted?

A. From 2 o'clock say at the time they took hold of her again until about half-past 5 or a quarter to 6; three-quarters speed.

Q. You do not know why it parted?

A. No, sir, but I could tell by the jolt down below when the hawser carried away. When we took hold of her again the captain says, "What are you making now?" I whistled up, "We are making 80 revolutions." He says, "Give her a little more." I whistled up and said, "I hardly think she will make much more. I will give it to her if you say so." He says, "Let her go at 90," and we started off at 90 revolutions.

Q. Did you come up on deck at the time of the parting of the hawser?

A. No, sir, I did shortly after, and I could see we were close in under the Vancouver shore. I knew where Race Rock light was. I could see that a little on the starboard side.

Q. How close were you?

(Deposition of F. F. Sheppard.)

A. I should think about a mile. It looked to me, giving a quick judgment, about a mile off of Race Rock. At that time it looked to me we were in a pretty bad position. He was much nearer to the shore than we were. If the hawser carried away again I don't think anything would save him. The southerly wind was blowing right over to Vancouver Island. That was then a lee shore to us both.

Q. How long did it take you to get out of there?

A. I came off of watch at 8 o'clock, and we had hold of her again. That lasted until about half-past 10. We were over at half-past 10 on the American shore.

Q. What happened then?

A. Then it carried away again, but I knew we were in comparatively smooth water and it would not be such a hard job to pick him up again. I noticed after I came off watch at 8 o'clock, that the schooner was sheering one way, and we were going another. We were going for Port Angeles, and she was sheering out towards Cape Flattery again. She could not keep in line with us. I says to the captain, "If she keeps on with that gait the hawser will not last long."

Q. She was pulling the stern of the steamer around?

A. Yes, sir, the "Nelson," over on one side.

Cross-examination.

Mr. DENMAN.—Q. Your watch was from 4 o'clock until 8?

(Deposition of F. F. Sheppard.)

A. 4 o'clock. 4 to 8 in the evening, and 4 to 8 in the morning.

Q. You came on deck at 8 o'clock that night?

A. Yes, sir, after I came off watch.

Q. That was the time you said that this southerly wind was blowing?

A. Yes, sir, blowing right down the Straits, a southeasterly wind. It was blowing us out to sea in the way the wind was blowing then.

Q. You said the general direction was southerly, and it was so dark you could not see?

A. Yes, sir.

Q. You got the wind off the compass?

A. It looked to me when we steered up the Straits that we were going easterly.

Q. It was so dark that you could not see at this time when you came up at 8 o'clock, it was so dark and drizzly that you could not see anything?

A. No, sir.

Q. You say the wind was southerly?

A. Yes, sir.

Q. I presume from that you got the wind off of your compass? A. Yes, sir.

Q. At that time were you having any difficulty with your towing?

A. No, sir, not up to 8 o'clock that night.

Q. Then you went below, as I understand?

A. Yes, sir, the captain gave me orders to go three-quarters speed. That is the way she went up to the time I went off watch. She went that way

(Deposition of F. F. Sheppard.)

up until one o'clock when she carried away. There is my log-book over there.

Q. When she carried away at one o'clock you came on deck?

A. I went right down in the engine-room and looked around. I knew the hawser had carried away because I felt the jar.

Q. You could see the lights astern of the schooner but you could not see either shore?

A. I could not see either shore.

Q. At that time the wind was the same as when you went below?

A. Yes, sir, only blowing harder.

Q. Then, as I understand it, you went below. How long did you stay in the engine-room at that time? A. From one until 2.

Q. The hawser did not part again during that time?

A. No, sir, not until my watch in the morning about a quarter to 6.

Q. Were you on deck at the time it parted?

A. No, sir, I was in the engine-room.

Q. Did you come up on deck?

A. No, I had to stand there and answer the bells. I was on watch.

Q. How long was it before you were on deck again? A. Not until 8 o'clock.

Q. You say she parted about half-past 5?

A. Yes, sir.

Q. Did she part again around 8 o'clock?

(Deposition of F. F. Sheppard.)

A. No, sir, not until somewhere about half-past 10.

Q. When you came up on deck at 8 o'clock where were you then?

A. On the Vancouver side, pretty close up to Race Rock light.

Q. Which way were you heading then?

A. I should judge this way (illustrating). That would be about southeast, and the schooner was heading southwest—southeast and southwest.

Q. At that time you had hold of the schooner?

A. Yes, sir, we had hold of the schooner.

Q. Endeavoring to get her over on the American shore?

A. Endeavoring to get her over on the American shore. Where we were on the Vancouver side we had the full benefit of the wind and sea.

Q. You think the wind and sea were in a general southerly direction?

A. In a southerly direction, yes.

Q. Did I understand you to say that you sighted the "Holden," or not, when you first came around Tatoosh? A. No, sir, I did not see her.

Q. You did not see her? A. No, sir.

Q. You did not see her at any time until you came up at 8 o'clock?

A. I saw her at half-past 5 when I was relieved for supper; I was up for 20 minutes for supper, and I went below. I noticed she was laying very low in the water, and had a port list.

Q. Was she waterlogged, and awash?

(Deposition of F. F. Sheppard.)

A. She was waterlogged. Her port rail was lower down than the starboard rail. She had a heavy list. I should think the lee side would have water on deck at that time.

Q. You do think so? A. Yes, sir.

Q. Did you look at that closely?

A. Yes, sir, because I have been going to sea a long time.

Q. You feel quite confident of that?

A. Yes, sir.

Q. Don't you know she was not waterlogged, and never had any water in her, and was as dry as a bone inside of her?

A. I should judge from appearances—

Q. You say the lee rail was awash?

A. I would not swear that the water was in the hold. Take a ship that cants over in that way like this, and that lee rail is in the water.

Q. Do you know what the cargo was?

A. I could see big timbers on her—bridge timbers. That is all I know. When I saw her on coming up at half-past 5. It was just getting dark then.

Q. And there was this mist also?

A. Yes, sir, squally; sometimes you would have a big shower of rain, and it would clear off a little bit, and then another shower.

Q. You cannot swear very definitely as to the condition of the "Holden" on account of the weather conditions?

A. Yes, sir, I could because there might be a clear spot when I came up for supper.

(Deposition of F. F. Sheppard.)

Q. You say she might be waterlogged, and would cant on that account?

A. I noticed that the lee rail would be level with the water, the port rail at least.

Q. You have a claim against the "Holden" for a share of the salvage?

A. Not at all; I have no claim whatever.

Q. That is entirely a matter between yourself and the company?

A. The only interest I have is as an employee of the "Charles Nelson." They pay me my wages. I did not consult an attorney and have no claim whatever. The "Charles Nelson's" interests is my interest. That is the way I look at it. I am not prejudiced on either side. I would give just testimony as far as I know how. I am not influenced either way. The "Charles Nelson" Company, employ me, and I naturally look to them. They are the party at stake. They did not promise no salary or no bonus, or anything like that.

Q. I do not mean to suggest that. You say you went below at 10 minutes to 4? A. Yes, sir.

Q. At that time the vessel had not sighted the "Holden"?

A. Not to my knowledge. I did not stop long enough. Going on watch I wear a thin shirt and a jumper and a thin cap. I did not want to stay out in the rain more than I could help.

Q. Where is your stateroom?

A. My room is on the port side. I have to go round forward of the pilot house and down through a companionway.

(Deposition of F. F. Sheppard.)

Q. You do not think at that time that the "Holden" had been sighted, do you?

A. I would not swear positively. They might see her on deck, when I did not notice her myself.

Q. Nothing had been said aboard of the ship?

A. Not to my knowledge. I did not notice it until I got a slow and stop bell, after I stopped. She stopped quite awhile so I knew there must be something unusual going on. I sent the oiler up. I said, "Go up and see what is the matter." He says, "There is a disabled steamer and they are getting the hawser out." He did not tell me she had no rudder, but he says, "It is a disabled schooner."

Q. Is the oiler here now?

A. No, sir, he has gone away. Do you want my log-book. There it is (handing).

Q. You wrote this up after you got in?

A. I write it up every day.

Q. After you got in port the next day?

A. The next noon when we got to Port Angeles. I write up my log every day at 12 o'clock.

Q. Do you write it up from a scrap-log?

A. I copy it off of the slate.

Q. As I understand it, from your log here, the machinery was in good condition and good working order? A. Yes, sir.

Q. And that was true, during all this time that you were towing?

A. All the time we were towing. You will see everything is marked "All well."

(Deposition of F. F. Sheppard.)

Q. And you went about three-quarters speed during the entire time of the towage?

A. Yes, sir, all the time we had to tow. Full speed is considered one hundred and twenty revolutions a minute running light. We run from 85 to 90 and 91.

Q. What speed was your vessel making at the time that you passed Flattery?

A. I should say about 12 knots an hour. The "Nelson" had got a good power in her. She has 1,000 indicated horsepower.

Q. You kept up that speed until the slow bell was going when you stopped at 4:25?

A. Yes, sir, 4:15.

Redirect Examination.

Mr. FRANK.—Q. By 12 knots an hour you do not mean over the bottom?

A. No, sir. 12 miles an hour would be more like it. A knot is much bigger than a mile. 12 miles an hour.

Q. You were not going that speed over the bottom? A. No, sir.

Q. You would not know in the engine-room what speed the engine was making only hearing the revolutions?

A. No, sir. I would hear them on deck. The captain would say she was making 12 knots an hour. That is not official.

Q. In the engine-room you have no means of ascertaining what speed she is making?

(Deposition of F. F. Sheppard.)

A. No, sir, I only know she turns up so many revolutions a minute. They would probably tell me on deck she was making 10 or 12, by the log.

Q. Upon this occasion the captain did not tell you how many knots she was making, passing Tatoosh? A. No, sir.

Q. So you are talking out of your imagination?

A. Yes, sir.

Q. So far as the number of revolutions is concerned, that is all you know about it?

A. Yes, sir.

Q. And she would make that many revolutions if she was going up against a headway and tide?

A. No, sir, she would not. She slows down.

Q. Against a head wind she would turn up those revolutions?

A. No, sir, in fine smooth weather she will make 120 revolutions whereas if she was bucking she would make 114 or 115 against a northwest wind.

Q. Upon this occasion when she passed Tatoosh, have you got down the number of revolutions?

A. 120 revolutions. You can see it; and the number of revolutions she made for the four hours. It is in that column of figures right down there (pointing). On the boat we have what is called a revolution counter, and it counts every revolution that is made.

Recross-examination.

Mr. DENMAN.—Q. As I understand it, you passed Cape Flattery at 3:15 that afternoon?

(Deposition of F. F. Sheppard.)

A. That is as near as I can judge. They do not whistle down on the "Nelson" the same as they do on some boats when they pass a point. I guess at it, and it may be 5 or 10 minutes off.

Q. It would not be more?

A. No, sir. Here is the point (illustrating), and they might take it at an angle when they changed the course.

Q. By the way, how is your course outside of Tatoosh. Do you pass clean to the northward of Duntz Rock?

A. Yes, sir. That is right off Cape Flattery. Lately the captains have gone inside of it.

Q. Did you go inside on this trip?

A. I could not tell.

Q. As I understand it, you continued at 120 revolutions passing Cape Flattery and up to the time that you stopped?

A. Up to the time that I got the slow bell at a quarter-past 4.

Q. That indicated in the engine-room that you were going full speed? A. Yes, sir.

Q. As far as the revolutions would indicate, she was not being *help* up by the wind or by the tide?

A. No, sir, not to my knowledge. Further down you see I only made 93 revolutions after we picked up the schooner.

[**Deposition of R. D. MacRae, for Libelant.**]

R. D. MacRAE, called for the libelant, sworn.

Mr. FRANK.—Q. Mr. MacRae, you were second mate of the “Nelson” were you not, at the time she picked up the “Holden”? A. Yes, sir.

Q. Were you on deck when you passed Tatoosh?

A. No, sir, I was called up when they sighted the “Holden.”

Q. What did you do when you were called up?

A. The mate came to my room and told me there was a vessel in distress, to get up; that probably we would all have to give them assistance; she was flying flags. When I came up on deck I could not tell what flag she was flying. I stopped on deck until we came alongside of her.

Q. When you came alongside of her where did you find her—where was she?

A. She was right off of Water Island, off of the entrance of Neah Bay.

Q. About how far off shore?

A. Probably a mile and a half or a mile and three-quarters; something like that.

Q. At the time that you came up, what was the condition of the sea with respect to swell or otherwise? A. A very heavy westerly swell.

Q. Setting in from the ocean?

A. Setting in from the ocean; a big ocean swell.

Q. What was the condition of the wind at that time?

A. The wind was blowing from the eastward, or probably maybe east southeast, and blowing at the

(Deposition of R. D. MacRae.)

rate of—it was blowing a pretty stiff breeze. I could not call it a gale altogether, 35 or 40 miles probably.

Q. How was the weather with respect to being thick or otherwise?

A. It was a regular southeasterly weather. It was kind of hazy out to sea, and squally, rain squalls at intervals, cloudy, overcast.

Q. When you came up alongside of her, was there any conversation between the two masters?

A. Yes, sir, we came up alongside, and our captain spoke to him, and he wanted to know if he wanted any assistance. He said, "Yes; will you tow me to Port Townsend?" Our captain said he would, he would tow him to Port Townsend. Then he asked him how much he wanted to tow him to Port Townsend. He said, "I will make no agreement with you, I cannot make no agreement." Afterwards he says, "I want you to understand that it won't be a salvage job." Our captain says, "I cannot make any agreement with you at all as to that. If you want me to help you I will; if not say so and I will proceed. If you want to take my line all right. Do you want to take my line?" our captain says. He says, "Yes, I will take your line."

Q. What happened next?

A. Then we got our line aboard, and we steamed around, and we went up to windward, and backed up to her.

Q. At this time did you notice what kind of outrigger or jury arrangement—

(Deposition of R. D. MacRae.)

Mr. DENMAN.—(Interrupting.) Do not lead him, Mr. Frank. Ask him what he saw?

Mr. FRANK.—Make your objection. I will frame my question to suit myself.

Mr. DENMAN.—The viciousness of this whole thing is that it suggests to the witness the answer that is expected, and it is impossible to correct it or to obtain any assistance from the Court, there being no one in a position to enforce rulings at this time, I therefore protest against suggesting that there were outriggers or anything else on the vessel, and before the witness has been squarely asked what he saw.

Mr. FRANK.—Q. At this time did you notice what kind of outrigger or jury arrangement the "Holden" had?

A. Yes, sir. I noticed he had—

Mr. DENMAN.—I object to the question upon the ground that it is leading.

Mr. FRANK.—You would save a good deal of the record by doing that in the first place?

A. He had a log drifting alongside, a spar of some kind, fastened on wires, drifting alongside.

Q. Which side was this?

A. At the lee side, when we came up, on the side that she had a list to anyhow. I don't know if that was the list side at the time. I did not take particular notice—no, it was under the weather side. It was to the side that was lowest. She had a list to port and was heading out towards the land.

Q. Which land?

(Deposition of R. D. MacRae.)

A. The American side. She was on an angle to the American side.

Q. When you say you did not take particular notice which do you mean? You did not take particular notice of the log floating alongside of her or the direction in which she was listing?

A. I did not take particular notice of the rig of the log that was alongside of her. I noticed she had a spar across the stern, and it was broken off at one side—one piece of it was broken off.

Q. That half that was broken off, what position did it occupy?

A. It was laying right across the taff rail from side to side; from port to starboard, right across. I don't know what he had used that for unless for his steering-gear. I know at this time the steering-gear was floating up alongside of him.

Q. I understand you to say then that the "Charles Nelson" went to the windward of her, and backed down to her?

A. Backed down to windward of her.

Q. How close did he back down to her?

A. Probably 20 or 25 feet, so that we could heave our heaving-line aboard of her.

Q. In backing down in this way, what if any effect did the wind have on the "Charles Nelson"?

A. It had the effect of catching her on the bow and swinging her around. You cannot steer a ship going backward as you can with the wind ahead of you.

(Deposition of R. D. MacRae.)

Q. In other words, it would throw her off and have the tendency to throw her alongside?

A. Yes, sir, to throw her broadside.

Mr. DENMAN.—I object to Mr. Frank testifying. He says “what would happen, in other words.”

Mr. FRANK.—Q. In the then condition of the wind and sea, state whether or not there was any danger attending that?

A. There was considerable danger attending it. If the lines had fouled the propeller we would both be in the soup—excuse me for using that language—we would both be in a bad fix. If our wheel had got afoul at that time we would have gone ashore ourselves.

Q. How with reference to the wind throwing her off, and throwing her broadside on?

A. If the wind did throw her broadside, if our wheel was clear, we could probably have got clear of her all right. If our line had got caught in the wheel or if this wreckage with the steering-gear had caught in our wheel it would have stopped us.

Q. How long did it take you to pass that hawser at that time?

A. Probably three-quarters of an hour; we had to go ahead and go back several times before we got the heaving-line aboard.

Q. What kind of a hawser was it that you passed him?

A. A new 10-inch manila hawser.

Q. After you had made fast what did you do?

A. Started to tow ahead up the Straits.

Q. In what direction was the wind at this time?

(Deposition of R. D. MacRae.)

A. The wind was east, or maybe a little south of east. It was blowing right down the Straits.

Q. Was there any change in these conditions during the evening?

A. The wind kept increasing all the time up to midnight. At midnight I was relieved, and I went below.

Q. At the time you were relieved what can you say about the force of the wind at that time?

A. It was blowing at that time probably 50 miles an hour. It was blowing very strong.

Q. How was the sea?

A. Choppy and rough; very rough; still getting worse all the time too.

Q. Was there any time during that night when the spray was thrown up over the vessel?

A. Yes, sir.

Q. State what your experience was in that respect?

A. The first time that we parted our hawser I was aft with a heaving-line, and we were backing up to him on the weather side, and a big slop of water came up and soaked me all over.

Q. How high were you up from the water's edge?

A. Probably 15 feet, and we had a deckload on too.

Q. This slop of water that came up—what was that? What was the nature of that?

A. It was not what you call a sea; it was a heavy spray.

(Deposition of R. D. MacRae.)

Q. How high was the chop of the sea? I will change that question: You have been going up and down those Straits for a good many years, have you not? A. Yes, sir.

Q. How did the condition of the sea itself on this night compare with what you have found there on former occasions?

Mr. DENMAN.—Objected to as utterly indefinite. No man can answer that question because he does not know. Former conditions are referred to. A man cannot be put under oath to describe things in comparisons of that indefinite nature.

A. In my experience up and down the San Juan de Fuca Straits, I never had worse weather than I had that night since I have been running up there.

Mr. FRANK.—Q. Now, you say at 12 o'clock you went below? A. Yes, sir.

Q. Had the line parted at that time?

A. No, sir.

Q. How long did you remain below?

A. Probably an hour.

Q. An hour?

A. Yes, sir; probably one o'clock or shortly before I heard the captain give two or three toots of the whistle.

Q. What did that mean?

A. That she was begging to steer; that he was signalling to steer her straight aft, to call his attention to bad steering.

Q. What happened then?

(Deposition of R. D. MacRae.)

A. All of a sudden I heard the surge when the line parted. I jumped out. I was putting my boots on when the mate came and called "All hands on deck." The tow-line had parted.

Q. When you got on deck what did you find?

A. That the tow-line had parted right at our rail.

Q. What was the condition of the night at that time?

A. It was awful black, and the wind was sluing around to the southwest, and howled like the mischief. The wind was coming in an opposite direction pretty near.

Q. You say it was awful black?

A. Yes, sir.

Q. Very black?

A. Dark as pitch and snowing sleet.

Q. Could you see the shore anywhere?

A. I could not see anything.

Q. Did you see any shore lights at all?

A. I saw Slip Point right off Clallam Bay.

Q. Did you see it at this time at one o'clock?

A. No, sir.

Q. I am asking you about one o'clock?

A. You could not see anything.

Q. Could you see the schooner "Holden"?

A. Yes, sir, we could see her.

Q. What could you see of her?

A. Whatever side we happened to be on we could see her side-lights. We went clear round her; then they had a couple of lanterns around the deck to watch for our heaving-lines.

(Deposition of R. D. MacRae.)

Q. How long then did it take you to pick her up again?

A. It took us probably an hour or more.

Q. An hour or more? A. Yes, sir.

Q. During that time what were you doing?

A. Backing and filling, trying to get up to her. We could not go at it bullheaded; we had to go easy about it.

Q. Why?

A. For fear that we would foul our propeller, or hit the "Holden" and knock the "Holden" ourselves. We were so close to the "Holden" once that I cleared off the poop. I was afraid we were going to get in a collision. We got on top of the sea and surged back on her. It seemed to follow the sea right on as you have noticed yourself in a small boat when she gets in a sea she seems to follow on top of the sea.

Q. What was the condition of the wind and sea at this time as compared with what it had been earlier in the evening?

A. Worse. It was blowing harder, and the weather was dirtier too.

Q. What hawser did you pass to him when you passed him any?

A. At that time—he had to haul our hawser at that time by hand—our big hawser.

Q. The 10-inch hawser? A. Yes, sir.

Q. You mean the one that was lying in the water?

A. Yes, sir. He had no steam on his donkey. The Captain thought it would be too long before he

(Deposition of R. D. MacRae.)

would get it in, and us to get hold of it again, and we gave him a 6-inch brand new line to keep him from drifting over on to the Vancouver side.

Q. You say that you finally succeeded in getting the 6-inch line aboard of her? A. Yes, sir.

Q. During the time that you were putting this 6-inch line aboard, was there any portion of the 10-inch hawser that was lying over your stern?

A. No, sir.

Q. It was only a short piece?

A. We hauled that in at once. That is the first thing we would do for fear that we would foul our wheel.

Q. His end of the 10-inch hawser was in the water during the entire time?

A. Yes, sir. He was hauling it in by hand.

Q. Then did you hold him up with the 6-inch?

A. Yes, sir, we held him up I think until about 3 o'clock.

Q. Did you make any headway with the 6-inch hawser?

A. We thought we were, but I don't think we were.

Q. You could not tell?

A. No, sir; we were trying to keep him over to the American side all the time, to keep away from the Vancouver side because the wind had a tendency to blow us that way.

Q. What happened to your 6-inch hawser?

A. The 6-inch hawser parted about 3 o'clock in the morning.

(Deposition of R. D. MacRae.)

Q. Why did it part?

A. Too much strain on it I suppose. She began to take us round like this (illustrating).

Q. You mean circling around?

A. Yes, sir; she would take a race across one side first—she was not steering at all, and then we would fetch her up and she would take the next tack and go the same way across again. She was going around and pulling our stern around with her. He would not dare to slack up for fear he would get foul of the line, so he kept going around like this. (Illustrating.)

Q. You mean he had to circle around?

A. Yes, sir, until he got a chance to get ahead of him.

Q. In other words, when she sheered she pulled the stern of the steamer around, and so the steamer could not steer?

Mr. DENMAN.—I object to the question as leading. I protest further against this class of examination of a decidedly willing witness.

A. Yes, sir.

Mr. FRANK.—Mr. Denman is testifying in regard to the nature of the witness, too.

Q. And the result of it was the steamer had to continue in the direction that the "Holden" had turned her?

A. Yes, sir, if we had plenty of room we could keep going over until we got the chance to go back that way. The "Nelson" had to keep coming the other way as he was not sure he had plenty of room.

(Deposition of R. D. MacRae.)

If he had plenty of room he could have kept her on that tack.

Q. By "plenty of room" what do you mean—between him and the shore?

A. Yes, sir, between him and the shore we could keep going ahead.

Q. Now, Mr. MacRae, this pulling around that you have just described. How frequently did that happen during that night by the sheer of the "Holden"?

A. I could not say for sure how often it happened. I know it happened at least three times that night.

Q. And what was the condition of the weather during the time that this was happening?

A. It was blowing a living gale of wind.

Q. After the 6-inch hawser parted did you succeed in getting another hawser fast?

A. Yes, sir.

Q. What hawser was that?

A. We got our own from the "Holden" in; she had it all hauled in. We backed up and threw our heaving-line aboard. We probably had 3 or 4 heaving-lines. We had three men standing by all the time with a heaving-line apiece so if one would miss the other would catch it.

Q. How long would it take you to get the heaving-line aboard?

A. At that time I think it was near 8 o'clock before we got it aboard.

Q. Before you got what aboard?

(Deposition of R. D. MacRae.)

A. No, sir, it did not take so very long that time, probably half to three quarters of an hour.

Q. Then what did you do?

A. We got it aboard, made fast and started in towing again.

Q. What happened then?

A. It parted again about half-past 5 or 6 o'clock.

Q. When it parted at half past 5 or 6 o'clock, what was the cause of it at that time?

A. I think it chafed off on his headgear. It parted very close to him anyhow, so we could not tell what caused it. It parted close to him. It was dark.

Q. What time in the night was that?

A. That was half-past 5 or 6 o'clock in the morning.

Q. At that time what was the condition of the wind?

A. It was blowing southwest. I think it was moderating somewhat then.

Q. What was the condition of the night with respect to being clear or dark or otherwise?

A. Dark—dark as pitch.

Q. At that time could you see any shore lights?

A. At half-past 5 when she parted the line, that time I could see Race Rock.

Q. How far off were you from Race Rock?

A. Probably 2 or 3 miles to the westward of Race Rock; probably more than that, but not over three-quarters of a mile off of the main land of Vancouver

(Deposition of R. D. MacRae.)

—three-quarters or a mile. That is my judgment; that is as far as I could judge.

Q. Did you pick her up again?

A. Yes, sir.

Q. How long did it take you to do it?

A. At that time before we got everything all ready for towing it was nearly 8 o'clock or half-past 7; I remember sending the men to breakfast.

Q. What was the difficulty in getting hold of her?

A. It was so hard to get close up to her; sometimes we would get up and make a mess of it, and she would start to sheer side on and we would have to go ahead again.

Q. What do you mean—the “Nelson”?

A. Yes, sir.

Q. That is the operation you were telling us of about the wind blowing her off?

A. Yes, sir, she would not back straight; no steamer will do it.

Q. Whenever she did it you had to start her out again?

A. Yes, sir; when we made a mishap we had to start out again.

Q. Finally you got the hawser fast?

A. Finally we got the hawser fast, yes.

Q. What hawser was that?

A. The big 10-inch hawser.

Q. As I understand you she had broken it this time close to the “Holden”?

A. Yes, sir.

Q. And that would leave a long streaming hawser out of your stern?

(Deposition of R. D. MacRae.)

A. Yes, sir; we hove it in in a short time. We hove it in by steam.

Q. After you got hold of her then off of Race Rock where did you go?

A. We started her up then across the other side of the Straits, started to take her up to Port Angeles.

Q. What happened before you got to Port Angeles?

A. There was a tugboat followed us up for some time before we got up there. When he was pulling around Ediz Hook she would not come around, she still kept going ahead, and we parted the hawser there again. At that time the captain of the "Holden" said "I will take the tug," or "I will order two tugs to tow me up to Port Townsend." Our captain says, "Since I have brought you this far I will bring you to a safe anchorage." After we got the hawser up again I heard him sing out to the captain of the "Holden" "a tough night, Captain"; "Yes," he says, "a very bad night." Then after we got in he told the captain of the "Holden" to drop his anchor when he sang out to him, and bend our lines that were on board to a small line, and that big shackle that we sent aboard.

Q. Did you take him in to a safe anchorage?

A. Yes, sir.

Q. In Port Angeles?

A. Yes, sir, in 10 fathom of water.

Q. Did you notice what kind of an anchor the "Holden" had?

A. Yes, sir.

Q. What was it?

(Deposition of R. D. MacRae.)

A. One of these patent anchors that runs up to the hawse-pipe.

Q. What can you say with reference to an anchor of that sort holding in a place like where you found them out off Waddah Island?

A. They are always poor holding anchors.

Q. Do you know anything about the bottom there at Waddah Island?

A. No, sir, I do not. I am not acquainted with that at all. I never see vessels anchor round there at all.

Q. With the anchor that he had in 40 fathoms of water, and the storm that you passed through that night, what is your opinion with respect to his chance of safety if he had anchored off of Waddah Island?

A. Very poor. I would not like to be on the "Nelson" and anchored there that night, and we had better holding ground shackle than she had. I certainly would not, and still we would not draw the wind that she would either, with her tall masts. I would not like to anchor there at no time. If you get caught in a gale of wind there it would be all off. If it came to drifting about there, and I could not do anything I would drop it.

Q. And take your chance? A. Yes, sir.

Q. The question is whether you consider that a very dangerous position, or otherwise. That is the question.

A. It certainly is a very dangerous position. Every seafaring man knows that. It is right in the open sea.

(Deposition of R. D. MacRae.)

Cross-examination.

Mr. DENMAN.—Q. Mate, how long have you been going to sea altogether?

A. I have been going to sea since I was 16 or 17. I am 46 now.

Q. Been at it pretty steadily ever since?

A. Yes, sir, except about three years.

Q. On this coast?

A. I have been on the North Atlantic mostly.

Q. When did you come out here?

A. I came out here seven years ago last November; I think it was seven years ago. I came out on the Boston steamer "Tremont."

Q. What papers do you hold?

A. A first mate's license.

Q. When did you get those?

A. I got them in 1901.

Q. That is out here?

A. No, sir, in Baltimore, Maryland. I had them renewed here last August.

Q. Where were you when you first sighted the "Holden"?

A. I was called out. Just after coming round Tatoosh the mate called me out and said there was a vessel in distress, and probably all hands would have to get out to assist.

Q. At that time you say there was a swell from the ocean?

A. Yes, sir, a heavy westerly swell.

Q. And the wind was blowing up the Straits?

(Deposition of R. D. MacRae.)

A. No, sir, down the Straits, blowing from the eastward, probably east southeast.

Q. And then, as I understand it, you took hold of the vessel and started up the Straits?

A. Yes, sir.

Q. You say that when you took hold of her you were about a mile off the shore of Neah Bay?

A. Probably a mile and a half or a mile and three-quarters.

Q. Off the shore of Neah Bay?

A. Off the shore of Waddah Island.

Q. Then you steered, as I understand, up the Straits—what time did you go below?

A. 12 o'clock.

Q. You were on deck from 8 to 12?

A. My watch came on at 6 o'clock, but I was called out a little after 4.

Q. You stayed right on until 12 o'clock?

A. Yes, sir. My watch came on before we were all ready to go ahead again.

Q. When did you first have any trouble with the steering?

A. She did not steer right all night, but she done fairly well up to 12 o'clock. While the wind was down the Straits she done fairly well.

Q. After I understand, the wind shifted to a more southerly direction?

A. Shifted round to the southwest.

Q. It was the fact that the wind kept laying on the "Holden's" starboard quarter that sent her head one way or the other and interfered with the towing?

(Deposition of R. D. MacRae.)

A. It interfered with the towing anyhow, because once the wind came round she did not steer at all. She did not make a pretense of steering.

Q. That is, when the wind got on her quarter?

A. Yes, sir, when the wind got on her quarter.

Q. As I understand you say somewhere between 12 and one o'clock the tow-line broke?

A. It was nearly one o'clock, if not one.

Q. You came on deck at one o'clock?

A. Yes, sir.

Q. Whereabouts were you then?

A. I could not tell because it was as dark as pitch; we could not see nowhere; we could not see the land; we thought we were probably a little more to the American side of the middle of the Straits. That is where we thought we were. We were trying to keep over there all the time. We knew if she broke away, the closer we were to the American shore the more sea-room she would have before picking her up.

Q. What direction were you heading? In a generally easterly direction? A. Yes, sir.

Q. The second time the tow-line broke was about 5 o'clock, or was that the third time?

A. In the morning?

Q. Yes.

A. It was one o'clock about the first time. The second time the 6-inch line broke away at 3 o'clock, and the third time at half past 5 or 6.

Q. That was the time that she was about three-quarters of a mile from the Vancouver shore?

(Deposition of R. D. MacRae.)

A. Yes, sir.

Q. After that you got her out of there and brought her back on the American shore, and took her on to Port Angeles? A. Yes, sir.

Q. I do not understand you had any serious or dangerous difficulty off of Ediz Hook, in that neighborhood, that your troubles came before that?

A. The biggest troubles came before that.

Q. It was a simple question of navigation when you got down by Ediz Hook. The wind was blowing off shore, was it not?

A. It was blowing up the Straits still, but it was greatly moderated by that time. The only trouble was, parting our lawser in the way she was carrying it she might run ashore because there was no distance off shore. She was awful stubborn to get around—to pull around.

Q. As I understand it you did not go aboard of the "Holden" at all? A. No, sir.

Q. You do not know anything of your own knowledge about the strength of her holding-tackle, or the amount of chain she had?

A. I don't know about the chain, but I have seen her anchors and know what they will hold too.

Q. How many anchors did she have?

A. She had two that we could see. She might have had a spare anchor; I don't know for certain.

Q. What do the anchors of the "Holden" weigh?

A. I am sure I don't know.

Q. I want you to swear to that?

A. I have no idea.

(Deposition of R. D. MacRae.)

Mr. FRANK.—He knows he is swearing to everything he says. I object to that method of intimidating the witness.

A. (Continuing.) I would not like to say that.

Mr. DENMAN.—Q. You do not know what they were, as a matter of fact? A. No, sir.

Q. As a matter of fact where the steamer is coming on with sternway, it is a bluff exposure to the water, is it not? The difficulty that you have in steering her is due to the fact that she has a square exposure of water?

A. No, sir, the rudder is behind, and even coming alongside of the wharf in smooth water you cannot back her up straight.

Q. How was the overhang of the stern on the “Nelson”?

A. She had quite an overhang. She is kind of thick in the counter. She has quite an overhang with a good quarter.

Q. As I understand it, when the waves came against her stern the washup was heavy enough at one time to throw spray on you. Is that a fact?

A. That came right over the side in the forward part of the poop. That did not come over the stern.

Q. She was backing at that time?

A. Yes, sir.

Q. That would bring her on with some power into the waves at that point?

A. Of course it would have a tendency to do it. I never saw the “Charles Nelson” ship a sea over the stern. I would not call that a sea either; I

(Deposition of R. D. MacRae.)

would call that a heavy spray. That was on the side.

Q. I did not think that was what you intended to testify at that time?

Mr. FRANK.—He did not say it.

A. Outside just before we came around to Tatoosh Island there was a very heavy sea.

Mr. DENMAN.—Q. Outside?

A. Yes, sir, a very heavy sea, just as heavy as ever I have seen on the Pacific. Of course when you get into shoal water it is choppy, you cannot raise the same in shoal water as you can in deep. It is choppy and nasty.

Q. As I understand your testimony, regarding this heavy westerly swell it was when you came around Tatoosh?

A. When we picked up Tatoosh there was a very heavy swell. The sea was breaking over Duncan Rocks, and going up 20 or 30 feet in the air.

Q. Duncan Rocks are where?

A. Off of Tatoosh Island.

Q. What was that swell that you experienced on the Pacific as you came around, a southwesterly swell with a southwesterly wind, or an easterly wind? A. Where?

Q. You say as you came up in the Pacific and rounded Cape Flattery?

A. There was a heavy westerly swell with an easterly wind, east southeast outside. As we came into Fuca Straits the wind hauled straight down the Straits. It generally does with a southeast wind.

(Deposition of R. D. MacRae.)

Q. It was not until about 7 or 8 o'clock that it came round to the southeast?

A. To the southwest you mean?

Q. To the southwest?

A. No, sir, it was after 12 o'clock when it came round to the southwest.

Q. Southeast up to 12 o'clock?

A. Yes, sir, east southeast up to 12 o'clock. She did not steer over good up to 12 o'clock. We had not so much trouble with her until the wind came round.

Q. Are you a member of the Sailors' Union here?

A. No, sir.

Q. You have not put your claim in with the other sailors? A. No, sir.

Q. Have you a claim against the vessel for a share of this salvage?

A. No, sir. I have not made any claim. I do not belong to no Sailors' Union.

Q. You expect to recover your share of the salvage?

A. If there is salvage in it I expect my share if anybody else does. I never thought of that. I have been in the same predicament before.

Q. You are still in the employ of the company?

A. Yes, sir, and have been for nearly two years.

[**Deposition of L. C. Hansen, for Libelant.**]

L. C. HANSEN, called for the libelant, sworn.

Mr. FRANK.—Q. You were the first mate of the “Charles Nelson” at the time that she picked up the “Holden”?

A. Yes, sir.

Q. How long have you been going to sea?

A. About 28 or 29 years.

Q. How long have you been on this coast?

A. About 22 years—about 20 years, I should guess.

Q. During that time you have been sailing constantly up Puget Sound, have you?

A. No, sir, not constantly, a great deal to Puget Sound but not constantly.

Q. During what portion of the time have you been going up the Straits?

A. Off and on for the last 20 years, master and mate and so forth.

Q. Now, at the time of this trip when the “Holden” was picked up were you on watch before you entered the Straits?

A. I was on watch when we entered the Straits. I was on watch that night up to 6 o'clock.

Q. At the time that you came in from the ocean what kind of weather did you have outside?

A. Outside the wind was strong southeast. When we got up towards Tatoosh or Flattery it hauled to the eastward, east southeast.

Q. How was it with respect to strength?

A. The wind was very strong, a strong wind.

(Deposition of L. C. Hansen.)

Q. Give us some idea about the strength?

A. It was probably blowing anywhere between 30 and 40 miles an hour.

Q. What was the condition of the sea?

A. Very rough, with a westerly swell; a heavy ground swell setting in.

Q. When you came to Tatoosh what did you find there?

A. After rounding the headland and getting a view of the Straits we sighted the schooner "W. H. Holden" and getting still further on we noticed that he had signals up.

Q. I mean what did you find with respect to the sea when you came round Tatoosh?

A. We found the sea still rough; in fact right in the entrance of the Straits it was almost breaking at times; the wind being from the east southeast, and the westerly swell coming in it made it very rough.

Q. Did you notice anything with respect to the swell making in, as far as the "Holden" was?

A. Yes, sir, the swell was setting in considerably on the "Holden," in fact it set right on the Straits

Q. When you came up to the "Holden" what did you find was her position?

A. Her position was probably a mile, between one and two miles to the eastward of Waddah Island, probably a mile off shore.

Q. In the position in which you found her what was the wind and what was the sea. What kind of wind and what kind of sea did she have?

A. The wind was still east southeast.

(Deposition of L. C. Hansen.)

Q. How was it with respect to strength?

A. About 30 to 40 miles an hour.

Q. How about the swell?

A. A heavy westerly swell—a southwest swell.

Q. When you got in there what did you find with respect to a jury-rudder or wreckage about this vessel?

Mr. DENMAN.—I object to that question as leading, and it has the same viciousness as all the questions put to the other witnesses had.

A. We found that his rudder was carried away. We could see it. It was plainly in view that his rudder was gone. We also found a spar over his stern right from side to side, and rail to rail, and part of a jury-rudder. It had been at some time part of a spar, and wires floating alongside still attached to the vessel.

Mr. FRANK.—Q. When you came up alongside, what, if anything, passed between the two Captains?

A. The captain of the “Nelson” asked the captain of the “Holden” if he wanted assistance, if he wanted to be towed, and the captain of the “Holden” said that he wanted to be towed to Port Townsend, but there was no price to my knowledge, or in my hearing, agreed on. It was understood—

Q. (Intg.) Not what was understood, but what you heard. What did one say, and what did the other say?

A. The captain of the “Nelson” said he would tow him to Port Townsend, but he would make no bargain; he would leave it to be set later on.

(Deposition of L. C. Hansen.)

Q. What did the captain of the "Holden" say?

A. He agreed to—

Q. What did he say?

A. He said, "All right," and he got the hawser.

Q. What, if anything, did the captain of the "Holden" say about salvage or towage?

A. I did not hear him say anything about salvage. Sometime after his getting the hawser he said something to the effect about that it would be a tow. Our captain said, "All right, I will tow you."

Q. That is while he was towing?

A. No, sir, after he had been getting the hawser—while we were in the act of getting the hawser on to the "Holden."

Q. Did he say anything that it should not be considered as a salvage?

Mr. DENMAN.—I object to that as most vicious.

Mr. FRANK.—Call it all the names you want. Put it in the record, and let it rest at that.

A. I did not hear that.

Q. How long did it take you to get a hawser on board of the "Holden" at this time?

A. Probably an hour.

Q. Why did it take you so long?

A. For one thing our hawser was down below. We had to go down to the lazarette, and after we got it up it took sometime before we got the hawser on to the schooner.

Q. Why was that?

A. Considering the state of the weather, and dangerous in getting alongside. It took our captain

(Deposition of L. C. Hansen.)

sometime before we got the hawser aboard of the "Holden." There was the swell and wind and several things to contend with. It took us all of an hour from the time we began until we started to tow it.

Q. After you had started to tow him up did you remain on watch all night?

A. I remained on watch. It was my watch below from 6 to 12. I remained on deck the biggest part of that time although it was not my watch on deck from 6 to 12.

Q. During that time did anything of importance happen? A. Not to my knowledge, no.

Q. What, if anything, was the condition of the wind and the weather during that time?

A. The wind and the weather during that time was still from east southeast but increasing.

Q. Was it your watch at 12 o'clock?

A. Yes, sir.

Q. You were still on deck?

A. I came on deck at 12 o'clock; my regular watch was on deck at 12 o'clock.

Q. After 12 o'clock what happened, and how did the tow act?

A. About 12 o'clock the wind changed round to the southwest and blowed very strong with squalls and snow and hail and misty, and unable to see very far.

Q. What happened?

A. At about one o'clock the hawser carried away.

Q. Why did the hawser carry away?

(Deposition of L. C. Hansen.)

A. Partly owing to the sheer, the vessel not being able to steer and keep straight after the steamer. The hawser parted. She would sheer to one side, and then to another side, and that would naturally put a very heavy strain on to the hawser.

Q. When she sheered in this way what effect did it have on the steamer?

A. When she sheered very heavy it pulled the steamer partly around. If the vessel sheered to either side it would pull the steamer out of position.

Q. What did the steamer have to do then to get back to position?

A. They usually had to steam right round in order to get on our course—to make a circle in order to get on our course again.

Q. That is what is known in sailors' parlance as getting the steamer in irons?

A. Yes, sir, I presume so. In sailing vessels we would call it in irons. In a steamer I don't know if you would term it that way.

Q. How often did that occur during that night?

A. That occurred a great many times. I am not positive as to the number of times. It occurred a great many times.

Q. That is, that the sheer of the schooner would turn the steamer around so that she would have to make a clear circle?

A. Yes, sir.

Q. Did this hawser part?

A. The first time it parted at one o'clock.

Q. What kind of a hawser was that?

A. A 10-inch manila.

(Deposition of L. C. Hansen.)

Q. How with respect to its age?

A. It was a brand new hawser. To my knowledge it had only been used once before. It was used off of Eureka Bar, 120 fathoms. 150, in fact. It was specially made for towing purposes.

Q. After this hawser parted what did you do with respect to getting hold of her again?

A. After the hawser parted we had to heave the hawser in. The first time the "Holden" hove her in, and while he was heaving her in we gave him a smaller hawser, a 6-inch hawser, not to tow but to keep it from drifting, to hold. When the "Holden" had the hawser in we got alongside of him again as near as we could and got the 10-inch hawser back again by giving him a heaving-line, and we hove it in with our steam capstan.

Q. At the time that the 10-inch line parted what was the condition of the wind and sea?

A. The wind was still southwest, and it was blowing very strong all that night.

Q. About how many miles, should you judge?

A. I should guess 50 or 60 miles an hour; it blew very strong that night in the Straits.

Q. What can you say with reference to your experience generally on that Sound. How did this wind compare this night with what was your former experience on the Sound?

A. That was as strong a gale of wind as I have seen on the Sound; it was a very stormy night.

Q. How long did it take you to get this 6-inch hawser on board at this time?

(Deposition of L. C. Hansen.)

A. It did not take quite so long; probably an hour; probably a little less. I am not quite positive as to the time.

Q. The 10-inch hawser, how long did it take you to get that in?

A. It took quite awhile before the schooner hauled it in. The first time the large hawser carried away it had to be hove in by the schooner. It took him quite awhile before he got the hawser in; finally when he had it in he hollered or swung his light and made signals that he was all ready, and we went alongside of the schooner again as close as we could, and after numerous attempts succeeded in getting the hawser by throwing a line from the steamer to the schooner.

Q. You were proceeding the same as before, trying to back up?

A. Yes, sir, we did that in each case. We came down on him as close as the Captain cared to.

Q. When you did this you would go on the windward side?

A. In each case on the windward side.

Q. What would be the effect on your vessel in trying to back up on the windward side?

A. The effect would be to slew her head around.

Q. Bring her broadside on to the schooner?

A. Yes, sir.

Q. Then you would have to leave and start over again? A. Yes, sir.

Q. During this time what can you say about any danger of collision between the two vessels?

(Deposition of L. C. Hansen.)

A. In a night like that there is always danger of collision. A mishap would cause a collision, or misjudgment.

Q. How far could you see the schooner's lights?

A. At times you could see very little. At times you could not see a mile, during the squalls—the snow squalls.

Q. Did that hawser part again?

A. It parted again about 3 o'clock.

Q. In the morning? A. Yes, sir.

Q. What was the cause of it parting this time?

A. The schooner not being able to steer, and sheering from side to side. The schooner would sheer to one side, and naturally would pull the steamer along, the schooner being here and the steamer here (illustrating) there would be a heavy strain on the hawser.

Q. How long did it take you then to pick up the schooner again?

A. I guess all of an hour.

Q. Do you know where you were at that time?

A. Not at 3 o'clock; I am not positive then. I know that the Captain had one of the men heaving the lead; he told me at one time he was very close in, and he had the man heaving the line. He had 30 fathoms of line out but no bottom. They reported no bottom.

Q. You did not know where you were?

A. Not positively. There were no lights in sight, and nothing to be seen—no lights to be seen.

(Deposition of L. C. Hansen.)

Q. You picked up the hawser again in the same way that you did before?

A. Yes, sir, in the same manner.

Q. And went through the same procedure?

A. Yes, sir.

Q. What happened next?

A. We got along nicely up to about 6 o'clock.

Q. What happened then?

A. The hawser parted once more.

Q. The same 10-inch hawser?

A. Yes, sir, still the same hawser.

Q. Where did you find yourself then?

A. At that time it started to clear up. It got a little better towards daybreak; there was a little break in the weather, and we found ourselves close on to Vancouver shore, and probably two or three or four miles to the westward, and a mile to a half a mile off shore.

Q. To the westward of what?

A. Off of Race Rock. At that time Race Rock came in sight.

Q. Two or three miles to the westward of Race Rock, and about a mile off shore?

A. A mile to a half a mile; I am not quite positive.

Q. How long did it take you to pick her up there?

A. It took us at least an hour and a half.

Q. Any danger attending it?

A. Yes, sir, a great danger.

Q. What was the danger?

(Deposition of L. C. Hansen.)

A. We came very near getting part of the hawser in our propeller at that time.

Q. Anything else? What was the condition of the wind and weather and sea?

A. The wind and weather was still the same. Still it was inclined to moderate. It was moderating a little at that time. The weather was on the mend. The weather was getting a little better. It was a little better at 6 o'clock than it was at 3; the wind was still from the southwest.

Q. You picked her up then and you went where?

A. We went on our way again more to the American shore. From the force of the gale and the condition of the weather it seemed that during the night it had gradually dragged the vessel toward the British side.

Q. Finally where did you get her to?

A. To Port Angeles.

Q. What happened when you were there?

A. It carried away once more.

Q. How did that happen?

A. On account of the schooner not being able to steer and taking a sheer to one side. At this time we did not have much trouble in getting our hawser on to the schooner.

Q. Did you hear any conversation at this time between the two masters?

A. No, sir. Yes, I did. At that time there was a tugboat in the vicinity, a Puget Sound tugboat. The captain of the "Holden" said that it would be all right, he was pretty well up the Straits and he

(Deposition of L. C. Hansen.)

would be all right. Finally he took our hawser again and we towed him to Port Angeles.

Q. Did you hear any more conversation between the two captains than that?

A. The captain of the "Holden" he said, "Well, Captain, I am all right now, I will send word in shore by this tugboat to notify my owners"—something to that effect—"and I will have down two boats, and they will be able to tow me to Port Townsend." Our captain says, "I have been taking you that far, you might as well take my line and I will take you to Port Angeles, then you can do as you please."

Q. Port Angeles I understand you to say is a safe anchorage?

A. Yes, sir. He was anchored in 10 fathoms of water in Port Angeles, inside of the breakwater.

Q. Did you notice what kind of an anchor the "Holden" had? A. A patent anchor.

Q. With such a patent anchor—do you know how many she had?

A. I presume she had two; in fact, I am quite sure she had two.

Q. With such anchors, and the kind of weather that you experienced that night, what is your opinion of the possibility of that vessel being held to an anchorage if she could have made one safe at Waddah Island where you found her?

A. I think that was a very poor shore to hang on to that night. Her chances would not be good to

(Deposition of L. C. Hansen.)

hang on all that night. It might do for part of the night, but all the night I doubt it very much.

Q. What can you say with respect to a patent anchor holding in the kind of bottom that they had there?

A. A patent anchor is not considered good on a rocky bottom; it is all right in soft mud or sandy bottom where it gets a chance to bury itself, and a good hold. A patent anchor on a rocky bottom is not considered a good ground tackle.

Cross-examination.

Mr. DENMAN.—Q. You were the first mate on the “Nelson”?

A. Yes, sir.

Q. As I understand you to say, there was a heavy swell off of Flattery as you came round and came into the Straits?

A. Yes, sir.

Q. When you came round you found the “Holden” a mile and a half east of Waddah Island, and a mile off shore?

A. Yes, sir.

Q. That is to say between Waddah Island and Seal Rocks, she was?

A. Can I look at the chart for a moment?

Q. Yes.

A. (After examining the chart.) I should say she was about here (pointing).

Q. A mile off shore would bring her about between 12 and 15? Those two marks (pointing)?

Mr. FRANK.—No.

Mr. DENMAN.—It was a mile off shore at any rate, about.

(Deposition of L. C. Hansen.)

A. I guess somewhere around here (pointing).

Mr. FRANK.—Pointing at the sounding 42 fathoms on the map opposite Clatchopis Point. (Addressing the witness.) That is about where she was?

A. Yes, sir.

Mr. DENMAN.—Q. You do not know what scale this map is drawn on, do you?

A. No, sir. I know it is a large scale of map.

Q. Your recollection is it was about a mile off-shore? That is correct? A. Yes, sir.

Q. And about a mile and a half easterly in the Straits from Waddah Island? A. Yes, sir.

Q. By the way you did not take any soundings there, did you, at that time? A. No, sir.

Q. You do not know what water you had under you by any measurement that was taken?

A. Not by measurement; no.

Q. You then took hold of her, and you continued up the Straits until about 12 o'clock that night?

A. Yes, sir.

Q. With the wind, as I understand it, in a general southeasterly or east by southeasterly direction?

A. East southeast direction.

Q. And then sometime between 12 o'clock and one o'clock the wind, as I understand it, came about and began to blow on the "Holden's" starboard quarter and made her sheer from side to side?

A. The wind from 12 o'clock to one changed to southwest.

Q. That caused her to sheer from side to side blowing on her quarter? A. Yes, sir.

(Deposition of L. C. Hansen.)

Q. And thereafter you had these troubles that you have described?

A. After the wind changed to the southwest the "Holden" steered very bad; after getting the wind astern from the southwest she sheered from side to side.

Q. You were on deck from time to time?

A. It was my watch below strictly speaking from 6 to 12, but I was on deck the greatest part of the time. My watch began again at 12, but I was on deck all night.

Q. As I understand it, you were afraid, were you not, that there would be a change in the wind and a possible change in the weather conditions. That was likely at that season of the year?

A. The change was there. While the wind was blowing from the east southeast it was increasing in force, and the barometer was falling, and there were all indications of very bad weather.

Q. Was the captain on deck during any of that time?

A. The captain was on deck all night. He was on deck from the time he took hold of the "Holden" until the vessel arrived in Seattle.

Q. As I understand it the tow proceeded along without any particular incident until along about one o'clock when the hawser parted?

A. The tow proceeded quite satisfactorily until the wind changed. That is the time when the trouble began.

(Deposition of L. C. Hansen.)

Q. Then, as I understand it, you had the tow-line parted on several occasions, and on one occasion when you were about three-quarters of a mile off Vancouver Island? That is correct, is it not?

A. We were about three-quarters of a mile off the last time that the hawser parted. The other times, that is, at one o'clock and 3 o'clock when the hawser parted, I am not positive of the distance off from the land.

Q. But you think there was some danger, then, on account of being near the Vancouver shore?

A. Yes, sir.

Q. What time was it that you finally got her into safe anchorage?

A. 12 o'clock, about noon.

Q. About noon the next day. A. Yes, sir.

Q. Did you leave her at Port Angeles?

A. Yes, sir.

Q. Who brought her in finally?

A. The "Charles Nelson" brought her in finally.

Q. I mean from Port Angeles in—who brought her in from that?

A. Who brought her in from Post Angeles?

Q. Yes.

A. We brought her in to Port Angeles. The "Charles Nelson" brought her in to Port Angeles.

Q. You left the vessel at Port Angeles?

A. We left the vessel at anchor at Port Angeles.

Q. Did you make any changes in your general course during the night? As I understand it you

(Deposition of L. C. Hansen.)

had to sheer from one side to the other and go clean around? A. Yes, sir.

Q. Did you maintain your same general course?

A. We were trying to maintain our general course and at the same time we were trying to get close to the American side in order to get in sight of the land, and to follow the shore line.

Q. As I understand it there were times when it became so thick that you could see barely over a mile.

A. Very true.

Q. Your general course was easterly?

A. Easterly, and east by south. By having that tow you have to use great discretion in steering the courses.

Q. The general course was easterly?

A. Easterly and the slightest southerly.

[Deposition of John Ranselius, for Libelant.]

JOHN RANSELIUS, called for the libelant,
sworn.

Mr. FRANK.—Q. What is your name?

A. John Ranselius.

Q. What is your age? A. 44.

Q. What is your occupation?

A. Master of steam and sail—seaman.

Q. How long have you been going to sea, Captain?

A. 28 years.

Q. How long have you been master?

A. Getting on to 16 years.

(Deposition of John Ranselius.)

Q. How long have you been sailing up the coast to Puget Sound?

A. I have been doing that off and on you might say for 16 years, and going in deep water and going to Australia and so on.

Q. You have been in the coasting trade continuously for how long?

A. I have been on this coast since 1885.

Q. You were master of the "Charles Nelson" at the time she picked up the "Holden"?

A. Yes, sir.

Q. What kind of weather did you have offshore before you entered the Straits?

A. Heavy southeast gale, quite a big westerly swell, and southwesterly swell outside, until we got up to Tatoosh. Then the swell was that big that—sometimes we would go through between Duncan Rock and Tatoosh Island. It was breaking right across, so I went to the northerly of that. There is a passage of 10 fathoms of water between Tatoosh Island and Duncan Rock, and it was breaking right in that depth of water. I was about a mile and a half to the northward of Duncan Rock, and steered my course going up the Sound up the Straits of San Juan de Fuca.

Q. When did you first see the "Holden"?

A. When I came a little further up I seen the schooner. He was heading right across the Straits. She had no headsails up of any kind. She was a

(Deposition of John Ranselius.)

four-masted schooner. As we came a little further up I could see she was loaded and listed to port, and I could see she had a mizzen up with a boom hauled up to windward and part of a spanker up. She had signals up. I could not make the signals out. Afterwards I see the signal "N. C." when we came close enough. I got the book out and that means "In distress; want immediate assistance." Then she had four other flags, single letters, and I took that to be the vessel's name. I came close up to her, to her stern, and of course I could see that she was unmanageable, and I asked the captain if he wanted any assistance. He said, "Yes." He said, "I want you to tow me to Port Townsend." He asked me how much I wanted for it. I told him I could not make no bargain, I could not state now; if he wanted any assistance, I would do so, and if he did not want it to say so, and I would go on my way. He told me then he had better take assistance, and for me to tow him. I told him "All right." I steered a little further off, and I told the mate to get all hands on deck, and we took our 10-inch line on deck, and made one end fast to our towing-bitt, and got another 3-inch line ready to bend on to it, and then we steered towards the "Holden," went on the weather side of him. Before that I see that there was some wreckage floating alongside of her. Before that, as I came alongside, the captain told me, "There is nothing the matter with me." I told him, "I don't care what

(Deposition of John Ranselius.)

is the matter; if you want any assistance I will give you assistance." I could see he was in distress; he had signals of distress up. I had no time to have an argument with him, because it was getting dark. After we got alongside of him,—we made two or three attempts to get alongside of him. He had some wreckage floating on the weather side. There was a spar or planks and wire attached to it. So I did not know how far that was drifting towards the weather side, so I steered as close as I could towards him. Then I rounded her up and backed down towards her, but the wind threw the bow back again, and I think it was 2 or 3 times that we attempted to get a heaving-line on board of him, and we got a line on board, a heaving line, and bent that on to the 3-inch line, and the 3-inch line was bent on to the 10-inch hawser, and we also bent a big shackle on to the big hawser. Then I told the captain to shackle that hawser with the big shackle on to his anchor-chain, so that I could tow on that. Then he told me that it would take him a couple of hours to get his anchor-chain ready, the best he could do would be to make a line fast to that bitt. I told him, "All right," to make it fast to his bitt, and let me know as soon as he had it fast. After he had it fast that must have been about pretty nearly close on to 5 o'clock. We started to steer up the Straits, and everything went well until about half-past 12.

Q. Going back now, let us finish with this conversation. Did the captain of the "Holden" say

(Deposition of John Ranselius.)

anything to you about this not being a salvage service?

A. No, sir, not to my knowledge.

Q. Did he say anything to you about it being understood that it was to be only a towage service?

Mr. DENMAN.—I object to that question as leading. Ask him what he said, and that will be sufficient. The same objection to the question is made here that has been made to all the questions on any point of evidence in which the libelant is vitally concerned. Words are put into the mouth of the witness, or thoughts are suggested to him in a way while successfully building up the case do not fall within the rules of evidence.

Mr. FRANK.—Q. Read the question, Mr. Reporter.

(The reporter reads the previous question).

A. No, sir, he did not, not to my knowledge.

Q. Did he use this language, Captain: "Captain, I understand this is to be a towage job and not a salvage job." A. No, sir.

Q. Did he say, "I am in a safe position here, and I can let go the anchor at any time"?

A. Not to my knowledge.

Q. Did he afterwards say, "Captain, I don't want to take your line except you consider this a towing job and not a salvage job," to which you replied, "All right; I will tow you." Any such conversation?

(Deposition of John Ranselius.)

A. As I came the second or third time alongside of him he was singing out. All my attention was paid to the vessel. Everything was understood and a bargain made that there was to be no agreement made of towage. It was understood that was just going to be assistance, and there was no word mentioned of salvage or anything of that kind, as I came alongside of him, and the captain agreed to that. Then, after I came the second or third time—I forget now which—the captain sang out something about towage. All my attention was paid to the steamer to get her alongside of the “Holden,” and I sang out to the captain of the “Holden” through the megaphone that I was going to tow him, and we passed him the line.

Q. You could not do anything else, could you, but tow him? A. No, sir.

Q. You could not take him aboard, could you?

A. No, sir. That is the reason I told him I was going to tow him. I thought it might be understood that I was going to take the crew off. I told him at that time that I was going to tow him and give him a line.

Q. What was the condition of the sea at that time where you picked him up?

A. It was a big westerly swell.

Q. And the weather was how, the wind?

A. I should judge it was blowing about 50 miles an hour.

(Deposition of John Ranselius.)

Q. How far off land do you judge he was lying?

A. I should judge about a mile and a half.

Q. Is there any anchorage there in that kind of weather?

A. No, sir.

Q. You are familiar with the Straits, aren't you?

A. Yes, sir.

Q. Now, I understand your hawser parted during the night two or three times?

A. It parted four times altogether.

Q. And each time you had to use the same maneuver to get your hawser on again?

A. Yes, sir.

Q. That is, you would have to go to the windward?

A. Yes, sir.

Q. Then back up to him and you would fall?

A. Yes, sir.

Q. Come alongside and start off again?

A. Yes, sir.

Q. Was there any particular danger in that maneuver?

A. Yes, sir, at any time we should get foul of his wreckage or spar that was floating alongside, or get it in the propeller we would be utterly helpless. They never made no attempt to cut that adrift.

Q. How about with reference to any danger of collision as the weather was?

A. There was great danger of collision. I know that of my own experience. I would say about 6 or 7 masters out of 10 would not have attempted to have picked him up that night.

(Deposition of John Ranselius.)

Q. You were going on to say that you were towing him. Go on with your story?

A. I was towing him. At about half-past 12 the wind hauled round and it got squally. It hauled round to southwest blowing hard. After that we could not manage to hold her no more. She went in all directions. At times I gave him the bell, and pretty nearly had to stop because she run in the opposite way that we wanted to tow her. This maneuvering went on for about half an hour or three-quarters of an hour. In the meantime I blew the whistle 2 or 3 times to see if they could not manage somehow or other to steer or keep straight behind the "Nelson," and about a quarter to one the tow-line parted.

Q. When the tow-line parted in what position were you?

A. The "Holden" was sheering over right across the Straits. The wind was southwest about. She was heading about south at that time. She was dragging the "Nelson's" stern with her. I could not manage the "Nelson." She would not steer. Before the hawser parted I had to turn round with her towards the Vancouver side. Of course the wind and weather set us also over to the Vancouver side. After the line parted it took us about, I should say—the line parted not far from the "Nelson," or close up to her stern somewhere, and I came close up to the "Holden." I think it took me about 15 or 20 minutes to find her again, because

(Déposition of John Ranselius.)

it was snowing at the time, dirty weather,—hailing and snowing. I got close enough up to the “Holden” and I sang out to them to get the line on board, to heave it in.

Q. That is the towing-line? A. Yes, sir.

Q. That was lying in the water?

A. Yes, sir. I don't know if the captain or mate or somebody sang out that he had no steam up, and it would take him about an hour to get up steam. Then I told him, “I will give you another line to keep you from drifting over to the Vancouver side.” I took up a new 6-inch line that had never been used and just bought that trip, and I passed it over to the “Holden.” We had quite a job in getting that on board on account of the wreckage floating on the weather side of the stern, and the broken hawser, the whole length of it, floating from the bow. I could not tell which way the hawser was leading. I thought the best way would be to back right amidships to the “Holden.” We got that 6-inch line on board. I told the captain then I would just hold him with that line until he got the hawser on board. We were just going ahead slow all the time getting over towards the American side in the best way I could manage it, but of course we could not keep very much strain on the 6-inch line on account of the big sea and very heavy weather or wind. In my estimation in them squalls it would blow at least 70 miles, if no more, with snow and hail. About half-past 3 the 6-inch line parted.

(Deposition of John Ranselius.)

I kept sounding most of the time, as I could not tell on which side of the Straits I was, but in my estimation—I could not see any lights and at times I could see the land over on the American side, and I thought I was close over towards the American side. After the line parted at half-past 3—I don't recollect now where it parted—I think it parted somewhere close to the "Holden"—we got that line aboard and went up to the "Holden," and we got our towing-line back on to the "Nelson" again, and we started to tow him on that. It was blowing that hard and the sea running that I could not manage him. We turned the "Nelson" round about three times in the Straits, and the only way to manage it was I had to turn around to the Vancouver side. About half-past 5 or 6—5:20, I think it was—the hawser parted again. About 6 o'clock, or a little before 6, was the first time that I see Race Rock light. He was close over towards the Vancouver side, and it took us to heave that hawser on board of the "Holden" again until most 8 o'clock, between half-past 7 and 8 o'clock, before we started towing again.

Q. How far were you from land then?

A. We were about a mile and a half, maybe a mile; somewhere around there. We drifted a great deal from 6 o'clock until we started towing again. I don't think we were much more than a mile off. After we started to tow the captain of the "Holden" at that time sung out to me to try to tow over to

(Deposition of John Ranselius.)

the American side. I told him that I had been trying to do that the whole night since the "Holden" refused to be managed. I managed her quite well up to half-past 12. I steered about right across then to the American side. She turned us round about once or twice, but about half-past 8 or 9 o'clock the weather moderated—the sea and wind. Of course I could manage her better then. About 10 o'clock I was off Ediz Hook light. I intended to take her into Port Angeles. In making that turn the "Holden" ran right over the hawser, and the hawser parted again. I went alongside again, or close up, and I told the captain that I would give him the hawser and take him into Port Angeles. He told me then that he was in smooth water and in no danger. I said to him it was "Quite a rough night, captain"; he said, "Yes, it was a dirty night and you did well." I passed him the line, and after he made the line fast I told him that I would take him to Port Angeles inside the harbor, and would sing out to him or tell him what time to let go of the anchor, and when he let go of my hawser to bend the broken parts of the hawser, and the 6-inch line, and the other small lines that he had on board from the "Nelson," and also the big shackle, and let go. I took him to a safe anchorage in Port Angeles in about 11 fathoms of water. I asked the captain if he was safe there. He told me he was, and that he had ordered two boats to take him to Port Townsend. I took my lines on board and pro-

(Deposition of John Ranselius.)

ceeded to Port Townsend. As I had my lines on board it was a little after 12 o'clock on December 13th, just about 20 hours since I took hold of the "Holden."

Q. Now, captain, you have told about the manner in which you picked up the "Holden" during this night; what was the general condition of the weather?

A. It was one of the worst nights that I ever experienced.

Q. That is with respect to wind and sea?

A. Wind and weather; it was blowing a gale; at times rain, snow and hail.

Q. Did you notice what anchors the "Holden" had? A. Yes, sir; she had patent anchors.

Q. How do patent anchors compare with other anchors as ground tackle, to hold?

A. In a rocky bottom they would not hold very much, because they slip clean over it. They do not hold half as much as a common old-fashioned anchor.

Q. In an ordinary anchorage with 40 fathoms of water about what scope of chain does a vessel ordinarily carry to her anchor? A. 40 fathoms?

Q. Yes.

A. She ought to have about 120 fathoms—at least that—to hold in ordinary weather.

Q. Now, with one or two anchors, say an anchor of 4,000 lbs., and 180 fathoms of chain and with

(Deposition of John Ranselius.)

the weather that you experienced that night, what chance to you think the "Holden" would have had to have held her anchorage, if she had made one, off of Waddah Island where you found her?

A. She would not have stood no chance at all.

Q. The master of the "Holden" has attributed the parting of these hawsers to improper navigation on your part, crossing his bow and going at full speed; did you ever cross his bow?

A. No, sir, because she did not manage. She would not steer. She would sheer over from one side to the other.

Q. Is there any way that you could have taken that vessel to have prevented her from doing the sheering which she did?

A. No, sir, except I went straight out to sea after 12 o'clock.

Q. That would not have been a very safe place, would it, with that vessel?

A. No, sir.

Q. You were hunting something better, weren't you?

A. Yes, sir. I wanted to get to a safe anchorage.

Q. What is the size of your vessel?

A. She is 397 net.

Q. What is her horse-power?

A. She has 890.

Q. Did you have cargo on board at this time?

A. Yes, sir.

Q. How much?

(Deposition of John Ranselius.)

A. I think 300,000 feet of lumber.

Q. Did you have any passengers?

A. Yes, sir, we had passengers.

Q. How many?

A. Well, now, I could not say, about 12 or 15; I could not say exactly; I will have to look the book up.

Q. Between 12 and 15 passengers?

A. Yes, sir, something like that.

Q. How much crew did you have? A. 27.

Q. Twenty-seven hands? A. Yes, sir.

Q. What did they consist of? And give their wages too, if you can recall it.

A. Master, \$175.

Q. First mate? A. \$100.

Q. Second mate?

A. \$85. 11 seamen at \$50. Chief engineer, \$135. First assistant, \$100. Second assistant, \$85. Three firemen, \$55. Two oilers, \$50. Steward, \$70. Cook, \$70. Waiter, \$35. Galley-man, \$35. One apprentice, \$25. That is all.

Q. She is in the regular passenger service?

A. Yes, sir.

Q. She carries passengers regularly?

A. Yes, sir.

Q. How was the night with respect to being dark or otherwise?

A. Up to 12 o'clock it was dark, but I should say we could see the lights about 7 or 8 miles, cloudy of course.

Q. After that?

(Deposition of John Ranselius.)

A. After that it was very seldom that I could see land; between say from a quarter-past 12 or half-past 12 to 6 o'clock I may have seen the land about 3 or 4 times.

Q. How did you make your course?

A. Well, I generally set a course over towards the American side. She turned us round all the time. We have got a towing-bitt aft, and the "Holden" would sheer over to the southward and she would take the "Nelson's" stern along, and that would make the "Nelson" head towards Vancouver Island, and of course I had to turn around. I could not straighten her up because she was going that way, and, of course, I could not put her wheel hard over.

Q. In other words, she kept wheeling you around?

A. Yes, sir, she kept wheeling me right around. In all that time the southwest wind would set us toward Vancouver Island, but my impression during all this time was that I was close over to the American side.

Q. That was your endeavor, to keep her over there? A. Yes, sir.

Cross-examination.

Mr. DENMAN.—Q. As I understand it, you proceeded without any particular incident until along between 12 and 1 o'clock when the wind sheered around to the southwest, and got on the starboard quarter of the "Holden," and began turning her bow to starboard, which threw your stern to starboard and your bow to port, and threw her over toward the Vancouver side? A. Yes, sir.

(Deposition of John Ranselius.)

Q. As I understand it, you could see up to about that time, when the wind shifted around to southwest—

A. (Intg.) Yes, sir.

Q. You could see lights seven or eight miles off?

A. Yes, sir.

Q. The straits are about 12 miles wide?

A. Yes, sir, 11 or 12.

Q. As you came down you could see Gettesburg light?

A. No, sir; that is the light that we see I think about 10 o'clock.

Mr. FRANK.—Q. What light is that?

A. Clallam Bay light. I think it was between half-past 9 and 10 o'clock.

Mr. DENMAN.—Q. And how about the Port Crescent light, when did you see that?

A. I never see it.

Q. You were looking for that, weren't you?

A. Yes, sir.

Q. You knew when you could not find it you must be pretty near over to the shore?

A. No, sir. I see the highland once in a while, and I was under the impression I was over to the American side.

Q. You could not have imagined that the Vancouver land was the American land?

A. No, sir.

Q. The compass would tell you that?

A. Yes, sir. Excuse me a moment. The witness that you had here before, the man that hove the lead—was on the weather side. He is the day man. He

(Deposition of John Ranselius.)

was always attending to the lead. He was on the weather side, the American side, because I thought I was closer over there, and he hove the lead over on that side.

Q. As I understand it, the big hawser parted between 12 and 1 o'clock? A. Yes, sir.

Q. And where did she part? Did she part so that she trailed from the "Holden"? A. Yes, sir.

Q. You put your light hawser on board of her, as I understand it, and held her up for a while?

A. Yes, sir, the smaller hawser.

Q. Was that the first time?

A. Before 1 o'clock.

Q. The purpose of putting the light hawser on was to hold her up from going over towards the Canadian shore?

A. Yes, sir, just to hold her.

Q. Finally you started trying to tow on that, and she parted?

A. No, sir, because I just wanted to hold on until he had the big line on board, and wait until daylight.

Q. Then, as I understand it, you started to slowly tow her, and it broke. Was that it?

A. Sometimes I gave more revolutions to the engineer than at other times. I watched the chance. It depended on which way the "Holden" swung. I watched my chance. If I thought I could keep a little more strain on her to keep us over there I did so.

Q. Your general direction was easterly by south?

A. Yes, sir, sometimes southeast.

(Deposition of John Ranselius.)

Q. But the wind kept coming on the quarter of the "Holden"?

A. Yes, sir.

Q. And finally broke this small line in two?

A. Yes, sir.

Q. Then you got the heavy hawser on again?

A. Yes, sir.

Q. And it was that hawser that broke when you were off Race Rock?

A. Yes, sir. At the time it parted I had not seen Race Rock.

Q. You think that the only alternative that you could have had that night would have been to have turned and gone out to sea?

A. Yes, sir.

Q. That is the only way that you could have avoided this sheering?

A. Yes, sir, to keep the "Holden" against the wind.

Q. If you had kept her against the wind, you would have been able to avoid the sheering, but you would have to go right back over the ground that you had come down?

A. Yes, sir.

Q. In view of the circumstances, you thought it was wisest to come into port rather than attempt to go back?

A. Yes, sir.

Q. As I understand it, you had 15 passengers on board?

A. 12 or 15. I could not exactly state.

Q. Where did you bring them from?

A. From San Francisco, and I think 2 from Humboldt, where I took the cargo.

Q. You were taking them into Seattle?

(Deposition of John Ranselius.)

A. I think I took them to Tacoma, because at times if I passed Seattle in the night-time, if it was too late to land, I gave them their breakfast in the morning and paid them their passage to Seattle if they wanted to go there.

Q. About what time were you due to arrive in Tacoma?

A. I had to go to Port Townsend for quarantine. As we left the "Holden" at 12 o'clock, we got to Port Townsend at 3 o'clock.

Q. Were you very much behind your schedule?

A. We lost about a day.

Q. Your regular time for arriving would be about a day earlier? A. Yes, sir.

Q. It might not have been quite that much because you were really coming on during all this time in your own direction? A. Yes, sir.

Q. So it was probably about a day rather than a day? A. No, sir, we lost about a day.

Q. You made pretty regular time on those trips ordinarily?

A. Yes, sir. Of course that depended on the weather.

Q. When were you due to leave Tacoma coming back?

A. We have no regular sailing time. We work sometimes to advantage to get away—we shift on a Sunday to our advantage—to get away before Sunday.

Redirect Examination.

Mr. FRANK.—Q. Was this 10-inch hawser a new or old hawser? A. A new hawser.

(Deposition of John Ranselius.)

Q. And the 6-inch hawser?

A. Also new. It had just come aboard at the time.

Q. The 10-inch hawser was what was known as a large towing-line?

A. A regular towing hawser; a 150 fathom line.

Q. The tonnage of the "Charles Nelson" that you gave me, was that net or gross? A. Net.

Q. What is your gross tonnage?

A. A little over 600; I could not say exactly.

Q. No, it is 800 net.

A. She is 397 net. I don't know exactly the gross.

Q. If you do not know, do not guess at it. If you know, give it to us?

A. No, sir, I do not. I could not think of it now.

Mr. FRANK.—We will be able to prove that.

Recross-examination.

Mr. DENMAN.—Q. You have not had much experience in towing, have you?

A. No, sir, I am not a towboat man.

Q. Did you ever do any towing before this?

A. Yes, sir.

Q. With the "Charles Nelson"?

A. Yes, sir.

Q. Whereabouts?

A. I have towed a vessel from the south up to Humboldt, and San Francisco up to Humboldt, and I have been in the "Lakme" at the time she was a

(Deposition of John Ranselius.)

barge; I was master of her. She was towing for about 5 or 6 months up and down the coast.

Q. About the "Nelson." You have towed with her quite frequently?

A. Not frequently. Some of our vessels, whenever they were ready to tow up, when the "Nelson" was ready to leave.

Further Redirect Examination.

Mr. FRANK.—Q. She was properly equipped for that service?

A. Yes, sir. That is why they bought the line 150 fathoms.

[**Commissioner's Certificate to Depositions of James McCue et al.**]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, James P. Brown, a United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing depositions is, that the testimony of the witnesses James McCue, John Wonderlick, Axel Lindgren, F. F. Sheppard, R. D. MacRae, L. C. Hansen and John Ranselius is material and necessary in the cause in the caption of the said depositions named, and that they are bound on a voyage to sea, and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Wednesday, April 1st, 1908, at 2 o'clock P. M., I was attended by Nathan H. Frank, Esq., of the firm of Messrs. Frank & Mansfield, proctors for the libelant, and William Denman, Esq., proctor for the respondent and claimant, and by the witnesses who were of sound mind and lawful age, and that the witnesses were by me first sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said depositions were, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Clement Bennett, and afterwards reduced to typewriting; that the reading over and signing of said depositions of the witnesses was by the aforesaid stipulation expressly waived.

I further certify that I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, the Court for which the same were taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In witness whereof, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 13th day of April, 1908.

[Seal]

JAS. P. BROWN,
U. S. Commissioner, Northern District of California,
at San Francisco.

[Endorsed]: Deposition of James McCue et al. Filed in the U. S. District Court, Western Dist. of Washington, April 16, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States, Western District of Washington, Northern Division.

No. 3617.

CHARLES NELSON,

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," etc., and
Cargo,

Respondent.

Stipulation [Relative to Testimony of James Tyson].

It is stipulated and agreed between the parties above named that James Tyson, the Vice-President and General Manager of the libelant, will testify in this case that the steamer "Charles Nelson" was at the time the services were rendered to the "Willis A. Holden" referred to in the libel herein of the value of \$75,000; that her tonnage is as follows:

Gross, 629 Tons; Net, 397 Tons.

This stipulation is entered into for the purpose of avoiding delay in the taking of the testimony of the said James Tyson, and the same shall be considered by the Court with the same force and effect as though the testimony of the said James Tyson to that effect had been actually taken.

It is further stipulated that the Court may consider as part of the testimony herein the report of

Bernard B. Whittier, Assistant Observer, United States Weather Bureau at Tatoosh Island, Washington, for December 10th, 11th, 12th and 13th, 1907.

Dated May 15th, 1908.

KERR & McCORD,
Attorneys for Libellant.

H. R. CLISE and
GEO. H. KING,

Attorneys for Respondent.

[Report of Bernard B. Whittier, U. S. Weather
Bureau.]

TATOOSH ISLAND, WASH.

December 12, 1907.

Maximum temperature, 50; minimum temperature, 38; Mean temperature, 44; Total precipitation, 1.11 inches; Day cloudy thruout; Light rain 7:45 am. to 9:20 am.; Light rain 11:40 am. to midnight; Total wind movement, 695 miles; average hourly velocity, 29.0 miles; maximum velocity for five minutes, 50 miles from northeast, at 8:05 am.; prevailing direction of wind, northeast; being SW. from midnight to 4 am., to S. to 8 am., E. to 4 pm., and NE. to 11 pm., and NW. to midnight; Barometer at 5 am., 29.76 inches; at 5 pm., 29.40 inches; Sea rough.

TATOOSH ISLAND, WASH.

December 13, 1907.

Maximum temperature, 49; minimum temperature 39; mean temperature, 44; Total precipitation midnight to midnight, 0.16 of an inch; Day, cloudy to 10 am., partly cloudy to 1 pm., cloudy to 4:30 pm., party cloudy to 7:20 pm., cloudy to midnight; Lt.

rain midnight to 8:50 am.; 1:45 pm. to 3:45 pm.; 7:25 pm. to 8 pm.; and during night, about 10 pm. to midnight; Total wind movement, 611 miles; average hourly velocity, 25.5 miles; maximum velocity for five minutes, 52 miles from west at 4:15 am.; prevailing direction, west, being steady except midnight to 2 am., NW., 1 pm. to 2 pm., NW., and 8 pm. to 9 pm., NW.; Barometer at 5 am., 29.40 inches; 5 pm. 29.91 inches; Sea rough.

BERNARD B. WHITTIER,

Assistant Observer, U. S. Weather Bureau.

TATOOSH ISLAND, WASH.

December 10, 1907.

Maximum temperature, 50; minimum temperature, 45; Mean temperature, 48; Total precipitation, midnight to midnight, 0.33 of an inch; Day cloudy thruout; Light rain during night, about 2 am. to 4 am.; Light rain began 6 am., ended 5:30 pm., Total movement of wind, in miles, for 24 hours, 536; average hourly wind movement, 22.3 miles; maximum velocity of wind for any five minute period, 37 miles from the east, at 12:15 pm.; prevailing wind direction to 2 pm., east; 2 pm. to 5 pm., Southeast to south; 5 pm. to midnight, west; Barometer, in inches, reduced to sea level, local time, 5 am. 29.59; 5 pm. 29.40; condition of sea, moderate.

TATOOSH ISLAND, WASH.

December 11, 1907.

Maximum temperature, 49; Minimum temperature, 44; Mean temperature, 46; Total precipitation, 0.69 of an inch; Day cloudy thruout; Light rain dur-

150 *The Globe Navigation Company, Limited,*

ing night, about Mid. to 2 am.; Lt. rain 7:45 am. to 9 am.; 10:10 am. to 10:15 am.; 11:10 am. to 3:40 pm.; 4:45 pm. to 5:15 pm., with some hail 4:52 pm. to 4:59 pm.; 6:00 pm. to 7:30 pm.; Total wind movement, 570 miles; average hourly movement, 23:8 miles; maximum velocity for five minutes, 54 miles from southwest, at 11:10 pm.; prevailing direction, southwest, the wind being somewhat variable from southeast to west; Barometer, 5 am., 29.72 inches, 5 pm., 29.53 inches; condition of sea, moderate.

BERNARD B. WHITTIER,

Assistant Observer, U. S. Weather Bureau.

[**Letter Dated April 16, 1908, from James Tyson to N. H. Frank.**]

(Letter-head of)

THE CHARLES NELSON COMPANY.

Refer to No. 123/68.

San Francisco, Cal., Apr. 16, 1908.

N. H. Frank, Esq.,

Merchants Exchange, City.

Dear Sir:

“Charles Nelson” vs. “Willis A. Holden.”

Replying to your favor of the 15th inst., beg to say that we value the St. “Charles Nelson” at \$75,000.00. Her tonnage is as follows:

Gross629 tons

Net397 tons

We hope Messrs. Kerr & McCord may be able to get a stipulation upon these points. Had we known these questions would have been asked the Captain

before you put him on the stand we certainly would have advised him.

Yours very truly,

JAMES TYSON,

Manager.

JT/1M.

(Please Note Contents and return to Frank & Mansfield.)

[Endorsed]: Stipulation. Filed in the U. S. District Court, Western District of Washington. Jan. 25, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

[**Testimony.**]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 3617.

THE CHARLES NELSON COMPANY,

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," etc.,

Respondent.

On this 15th day of January, 1908, the libelant appeared by Messrs. Kerr & McCord, and the claimant by Mr. Geo. H. King; thereupon the respective parties stipulated that the testimony proposed to be offered at this time on behalf of the claimant, be taken before me, A. C. Bowman, U. S. Commissioner for said District, in the same manner and with the same force and effect as if an order of reference had been

(Testimony of A. L. Laur.)

made; and that said testimony when so taken, shall be returned with any other testimony taken after reference shall have been made.

Thereupon the following testimony was produced on behalf of the claimant:

[Testimony of A. L. Laur, for Claimant.]

A. L. LAUR, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. KING.) Your name is A. L. Laur?

A. Yes, sir.

Q. How old are you, Captain?

A. Thirty-nine.

Q. What is your profession?

A. Seaman; master mariner.

Q. How long have you been to sea?

A. I have been to sea since I was 16 years old.

Q. How long have you been a master mariner?

A. About eight years—nine years.

Q. Where has been your sea experience with reference to this coast?

A. Since the spring of 1890.

Q. I mean have you been in and out and around Puget Sound?

A. Yes, sir; I have been around Puget Sound.

Q. And in the Straits of Fuca?

A. Yes, sir.

Q. Since 1890?

A. Yes, sir; I was first in the Straits of Fuca in 1891.

Q. And at all seasons of the year?

(Testimony of A. L. Laur.)

A. At all seasons of the year.

Q. I hand you a paper that has been marked identification "1," and ask you what it is.

A. It is a chart I used coming into the Sound.

Q. Chart of what?

A. Straits of Juan de Fuca.

Q. You sailed on this voyage from where.

A. Willapa Harbor.

Q. On what day?

A. November 30th. I would not be sure about dates; as far as my memory goes, but it is down in the log.

Q. You met with misfortune, didn't you?

A. Yes.

Q. What was that?

A. I lost a rudder and the deck load of the ship after I was out a couple of days.

Q. What condition were you in on December 12th?

A. On December 12th I had no rudder on the vessel, and the deck load was partly shifted; I had thrown part of the deck load overboard.

Q. How much of a list had she?

A. She had a list of about nine degrees.

Q. Port or starboard? A. Over to port.

Q. Now, referring to claimant's identification "1," I wish you would point out where your ship was on the morning of the 12th of December, 1907?

A. About what time?

Q. About nine o'clock in the morning.

A. About two miles off Sombrio point.

(Testimony of A. L. Laur.)

Q. Now, mark on the chart with the letter "A" the situation of the ship at 9 o'clock A. M. on December 12th? (Witness does so.)

Q. The ship was the "Willis A. Holden"?

A. Yes, sir.

Q. What was she?

A. A four masted schooner.

Q. Laden with lumber?

A. Laden with lumber.

Q. And bound for where?

A. Bound for Shanghai, originally.

Q. What was the size of the "Holden," do you know? A. 1040 tons net.

Q. When you were at the point marked "A" on the chart at 9 A. M. December 12th, what was the state of the wind and weather?

A. The wind was east-northeast.

Q. How strong? A. A fresh breeze.

Q. And what was your weather conditions, was there any fog?

A. No, there was a slight haze over the American shore at times.

Q. Could you see the American shore?

A. Yes, well.

Q. What did you do then?

A. I tried to get the vessel around.

Q. Which way was she headed?

A. She was heading up toward the Vancouver shore.

Q. And you tried to get her around?

(Testimony of A. L. Laur.)

A. I tried to get her around so as to make the head toward the American shore.

Q. What was the purpose of coming over to the American shore?

A. Because on the American shore I could get anchorage. On the Vancouver shore I could not.

Q. What did you do to get her over there?

A. I first tried to get all my foresails over on the one side and my aft sails to the other and tried to get around but she would not come; then I lowered them down I lowered down my fore sail, lowered down all the head sails and hauled my spanker and my mizzen over to windward on the starboard side; hauled them over on the starboard side.

Q. What did you do then?

A. Then she gathered sternway and started to sail across.

Q. What direction did she sail?

A. She sailed in the direction of about southwest by south.

Q. How long did she sail that way?

A. Somewheres near—I could not tell you exact without taking an exact bearing with my rulers.

Q. How long did she sail that way?

A. She sailed that way until 4 o'clock in the afternoon.

Q. Make the letter "B," if you can, on the point on the chart, in red ink, where she was at 4 o'clock in the afternoon.

(Witness does so.)

(Testimony of A. L. Laur.)

Q. That is where you were at 4 P. M. on December 12th? A. Yes.

Q. And how was the wind and weather conditions then?

A. The wind and weather conditions were getting light northeast winds.

Q. Weather clear or foggy?

A. No, it was hazy above the land, but clear; you could see the land all over.

Q. How far were you from the land?

A. From land? About three-quarters of a mile.

Q. What was your position with reference to Waaddah island?

A. The outer end of Waaddah island bore to the west, at that time.

Q. And how did Seal Rock bear?

A. Seal Rock bore a little to the south of us, because we were at the outer—we were outside of the line of the outer end of Waaddah island and Seal Rock; the north end of Waaddah island, we were on the outside of that.

Q. Did you take any soundings?

A. I took soundings a little before 4 o'clock.

Q. What water did you get?

A. I got forty fathoms.

Q. Is that the last sounding you took?

A. That is the last sounding I took.

Q. Did you make any preparation to anchor.

A. Yes.

Q. What preparations did you make?

(Testimony of A. L. Laur.)

A. The anchor was ready to let go at any minute, at a minutes notice and the men were standing by the anchor to let go.

Q. How many anchors had you?

A. I had three anchors.

Q. How much cable had you?

A. I had 180 fathoms.

Q. And you had forty fathoms of water?

A. I had forty fathoms of water.

Q. Do you know how much scope would enable her to ride safely in forty fathoms of water?

A. Well, the way the weather was just then, sixty or seventy fathoms, but I was prepared to give her 180 fathoms.

Q. How would that hold her?

A. That would have held her in any gale.

Q. Were you flying any signals at that time?

A. Yes, I was flying a signal at that time.

Q. What signals were you flying?

A. I was flying distress signals forward, that had been put up early in the morning.

Q. What was that?

A. That was a square flag with a round ball below it.

Q. Do you know what that meant?

A. Yes. "I want immediate assistance."

Q. Any other signals?

A. Yes, I had the signal "C. N."

Q. Where was that flying? A. It was aft.

Q. What did that mean?

(Testimony of A. L. Laur.)

A. It means: "Can you give us any assistance in the way of"?

Q. "Can you render any assistance in the way of"?

A. Yes.

Q. These were both flying at 4 P. M.?

A. These were both flying at 4 P. M.

Q. And the wind at that time was what direction?

A. The wind was about east-northeast, light, very light.

Q. Do you know anything about the holding ground where you were?

A. Yes.

Q. What is it.

A. Good holding ground.

Q. Ever anchor there before?

A. Not exactly in that place, but further up.

Q. How close to it.

A. About three miles further up the straits.

Q. What was your object in flying these signals?

A. I wanted to attract attention to the light-house people over here. I had set them at daylight in the morning.

Q. What was your object in attracting their attention.

Mr. McCORD.—I object to that question as immaterial and incompetent, on the ground that the signals themselves show what they meant, and I move to strike the answer for the same reason.

(Question read to witness.)

Mr. McCORD.—I renew my objection.

(Testimony of A. L. Laur.)

A. So that they would report; there is a telegraph station from there up to Port Townsend and Seattle, and I could get in communication with either the towboat people or the Globe Navigation Company.

Q. What are the prevailing winds in the straits of Fuca in the winter time?

A. Southerly; southeast and southwest.

Q. How did your vessel lie with reference to the prevailing winds, winter winds, at 4 o'clock on December 12th? A. You mean the position.

Q. I mean as to safety.

A. As to safety, she was perfectly safe as to prevailing dangerous winds.

Q. What do you mean by perfectly safe?

A. She was under the land where the gale, even a heavy southeast or southwest gale is broken, right close underneath the land; and there is no swell coming in here, the prevailing swell from the southwest any swell is from the southwest.

Q. You knew what the condition of the weather was from sometime in the later day and night of the 12th and early morning of the 13th? A. Yes.

Q. What was it?

A. The wind was east-north east until half-past 11.

Q. Then what?

A. At half-past 11 the wind hauled around to the southwest.

Q. What sort of wind was it as to velocity?

(Testimony of A. L. Laur.)

A. The wind commenced getting heavy, in squalls.

Q. And how long did that prevail?

A. The wind prevailed all night, until daylight.

Q. Now, taking these conditions that you have just testified to, as to the wind and weather on the night of the 12th and 13th in consideration, supposing you had anchored where you were at 4 P. M. with reference to Waaddah island, what effect would that weather have had upon your vessel?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial, and asking for a conclusion of the witness.

A. The vessel would have laid there safely, because it could have laid safely anywhere along that coast, the American shore, excepting one or two places.

Q. Notwithstanding the heavy wind?

A. Notwithstanding the heavy wind.

Q. Now, when did you first see the steam schooner "Charles Nelson"?

A. Somewhere around about four o'clock.

Q. What day was that?

A. December 12th, about 4 P. M.

Q. Where was she?

A. She was standing about a mile and a half on the other side of the buoy, of the Neah bay buoy.

Q. Heading which way?

A. Heading up the straits, heading about east-northeast.

Q. What did the "Nelson" do with reference to coming close to you?

(Testimony of A. L. Laur.)

A. She came alongside.

Q. About what time?

A. About four o'clock.

Q. Between four and five?

A. Yes, somewhere around 4 o'clock.

Q. At the time she came alongside, had your position changed any from what you have just testified?

A. No. That was the position I was in when the "Charles Nelson" came alongside that I put down here on the chart.

Q. Did the "Charles Nelson" stop or slow down?

A. Yes, she slowed down.

Q. Did she hail you?

A. Yes, the captain asked, "What do you want"?

Q. Who hailed you? A. The captain.

Q. Where was he? A. On the bridge.

Q. What did he say?

A. He says, "What do you want?"

Q. How close were the two vessels?

A. Thirty or forty feet, somewhere along there.

Q. And what sort of wind.

A. The wind was east-northeast, light; hardly any wind just then.

Q. Did you hear him plainly?

A. Yes, I heard him plainly.

Q. Did he hail you through a megaphone?

A. No.

Q. Where were you?

A. I was aft on the poop.

Q. And did you answer him?

(Testimony of A. L. Laur.)

A. I answered him, yes.

Q. What did you say?

A. I says, "Captain, can you tow me to Port Townsend?"

Q. Did you answer him with your voice?

A. No, I spoke through a megaphone.

Q. Did he reply to that?

A. He says, "Yes, I will tow you."

Q. What had the vessel been doing in the meantime?

A. She passed along the side of us and passed us.

Q. Which side did she come up on first?

A. On the starboard side.

Q. And she passed along the starboard side?

A. She passed along the starboard side.

Q. What did she do?

A. She turned around abaft and came alongside on the starboard side again—no, before she turned I asked him how much he wanted, that is before he turned around, while he was alongside?

Q. You asked him what?

A. I asked him, "How much do you want to tow me to Townsend?"

Q. What did he say?

A. Well, he says, "I don't want to make any agreement."

Q. Did he ask what was the matter with you?

A. No, he did not ask. He says, "You lost your rudder?" and I says "yes."

Q. Then he passed on, did he? A. Yes.

Q. Then what did he do?

(Testimony of A. L. Laur.)

A. He turned around.

Q. Did he circle your ship?

A. No, he turned around and came on the same side of the ship again.

Q. Then what did he say?

A. Then I hailed him.

Q. How close did he come this second time?

A. Inside of twenty feet.

Q. You hailed him the second time?

A. I hailed him the second time. First from aft, and I did not want there to be any question about the towage—

Q. Say what you said to the captain?

A. I said, "Captain, I understand this to be a towage job, and not a salvage job."

Q. Very well.

A. "I am in a safe position here, and I can let go anchor at any time."

Q. And your recollection is clear that that is what you said? A. Absolutely, yes.

Q. What did the captain of the "Nelson" say?

A. He did not answer the first time.

Q. What then happened?

A. Then I went forward and I had my megaphone along and I says, "Captain, I don't want to take your line except you consider this a towage job and not a salvage job."

Q. Did he answer that? A. Yes.

Q. What did he say?

A. He said, "All right; I will tow you."

Q. What did he then do?

(Testimony of A. L. Laur.)

A. He passed their heaving line aboard.

Q. How far apart were the vessels then?

A. About twenty or thirty feet.

Q. Was there anything on the end of the heaving line? A. Yes.

Q. What?

A. There was a hawser, a small line first and then a hawser.

Q. You took the hawser? A. Yes.

Q. How big was the hawser?

A. About 10 inch, I should judge, as far as my recollection goes.

Q. What did you do with the hawser?

A. Made the hawser fast to the bitt, parcelled it well first and then made it fast to the bitt.

Q. Was there anything said about the price?

A. No, nothing said about the price.

Q. Would you or would you not have declined to be towed if the price had been given and you had thought it too high?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial and leading.

A. Certainly I would not, if the price had been too high, I would not have taken her.

Q. As a master mariner, what, in your opinion would be reasonable compensation for towing you from where you *lat* to Port Townsend, wind and weather being as it afterwards as—I mean to Port Angeles?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial; not within the issues of the case,

(Testimony of A. L. Laur.)

and the witness has not shown himself qualified to testify on the subject.

Q. Have you had any experience in being towed?

A. Yes, sir.

Q. Are you acquainted with the rates of towage?

A. Yes, sir.

Q. For such vessels as the "Holden" in Puget Sound? A. Yes, sir.

Q. And the straits of Fuca where you were?

A. Yes, sir.

Q. Now, you may answer the question. (Preceding question read.)

Mr. McCORD.—I renew my objection.

A. Common towage rate.

Q. What is common towage rate?

A. There is a schedule for that, I do not know that by heart, but my whole towage rate up to Seattle amounts to about \$260; their towage rate could be taken out of their schedule.

Q. How far did the "Nelson" tow you all told?

A. The "Nelson" towed me about 55 miles.

Q. Then at the time the "Nelson's" captain and you were bargaining, as you have testified, if you had known that the price of towage would exceed the sum of \$260, would you have done it?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial.

A. If it had been \$260?

(Question read.)

A. I did not bargain with him to Port Angeles.

Q. Just answer the question?

(Testimony of A. L. Laur.)

A. I would not have taken—to Port Angeles, I would not have taken him at \$260:

Q. You bargained to Port Townsend?

A. That is where I wanted to go.

Q. Would you have taken to Port Townsend?

A. I would have taken \$200 to Port Townsend, I would not have gone above \$250 to Port Townsend. Any other place I did not want to go.

Mr. McCORD.—I move to strike the answer as incompetent, irrelevant and immaterial.

Q. When you say you would not have taken the tow if it had been over \$250 to Port Townsend, what do you mean, what would you have done?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial.

A. I would have let go my anchor and laid there.

Q. With the exception that her rudder was gone, what was the condition of the “Holden” at the time the “Nelson” took hold?

A. She was sound.

Q. How much of a crew did you carry?

A. 12 men all told, with myself included.

Q. They were all aboard at that time?

A. They were all aboard.

Q. Now, I understand you to say that you got away about 5 o'clock?

A. Somewhere along there.

Q. In the afternoon of the 12th?

A. It was closer to four than to five.

Q. Between four and five?

A. Yes, close to four.

(Testimony of A. L. Laur.)

Q. What direction did you go in?

A. Went a general course along the land, about east by north.

Q. Well, how long did the northeasterly wind hold? A. Until half-past eleven.

Q. What happened then?

A. The wind hauled around to the southwest.

Q. Where were you at that time, do you know?

A. At that time I was off Port Crescent, about; Port Crescent was bearing then about south south-east.

Q. Well, did the wind come up gradually or suddenly?

A. I was not on deck at the time.

Q. When did you go below after the tow-line was made fast?

A. After the tow-line was fast I went below about 8 o'clock.

Q. How were you heading then and what was the state of the weather?

A. The wind was east-northeast, moderate breeze; the state of the weather was fine, a little hazy over the land.

Q. When did you come on deck again?

A. Came on deck again at 12:30.

Q. What was the state of the weather then?

A. Blowing squally from the southwest; came up in squalls.

Q. You were then, you say how far from Port Crescent?

(Testimony of A. L. Laur.)

A. 12:30 when I came on deck, Port Crescent was bearing somewheres around southeast by south, somewhere around there, I could not tell exactly on the chart without taking my bearings. She was about here.

Q. Mark where she was then when you came on deck, with the letter "C"?

(Witness does so.)

Q. Which way were you and the "Nelson heading at that time?

A. The "Nelson"—the tow-line had carried away.

Q. The tow-line had carried away before you came on deck?

A. Before I came on deck.

Q. When you came on deck you found the tow-line parted? A. Yes, sir.

Q. How far from the point marked "C" on the chart was the "Nelson"?

A. Oh, inside of a few hundred feet, four or five hundred feet, may be.

Q. What did you do then?

A. I ran forward to see what was the matter.

Q. Do you know how long the tow-line had parted before you came on deck?

A. No, I heard the tow-line part.

Q. As you came up?

A. No, I was lying down, I heard the line part and I jumped up.

Q. You don't mean that the line parted at 8 o'clock and you did not come on deck until 12?

(Testimony of A. L. Laur.)

A. At half-past twelve I heard the line part. I laid down at 8 o'clock in the evening and was lying down until half past twelve.

Q. At half-past twelve you heard the line part?

A. Yes.

Q. What did you do?

A. Then I jumped up and got on deck.

Q. What happened when you got on deck?

A. I went forward to see what was the matter and I saw the line, the hawser hanging over the side.

Q. What did you do?

A. I got everybody out and got the hawser aboard again, and found the head gear carried away.

Q. You got the hawser aboard. How did you get the hawser aboard, by hand or by steam?

A. By steam.

Q. Got it by steam?

A. No steam up; we kept the boiler hot.

Q. How long did it take you to get the hawser aboard? A. A couple of hours.

Q. And in the meanwhile what was your ship and the "Nelson" doing?

A. Well, the "Nelson" was standing by and I was getting the hawser aboard.

Q. I know, but your ship was moving in what direction?

A. The ship was moving in, about from point "C" up to this point. In a northeasterly direction.

Q. And the "Nelson" was standing by her?

A. Yes, sir.

Q. You were not on deck when the hawser parted?

(Testimony of A. L. Laur.)

A. No.

Q. You do not know what parted it?

A. It parted aboard the "Charles Nelson."

Q. Did not part aboard the schooner?

A. No.

Q. When you hauled the hawser aboard, the end of it, was there anything there to lead you to any opinion why it parted?

A. Yes, I saw where there was parceling on the end of it and the hawser where it had been parceled aboard the steamer must have got off across the rail or across some obstruction aboard the steamer.

Q. Well, by parceling you mean chafing gear?

A. Yes.

Q. Was the chafing gear cut through?

A. Yes, it was cut through.

Q. What happened on the "Holden" when that hawser parted?

A. It carried away the headgear.

Q. What headgear?

A. Carried away the three bobstays.

Q. Anything more.

A. That is as far as I could find out then, but we found out further on, afterwards, that it carried away the stay and it hauled the topmast—made the topmast skies down into the mast.

Q. Do you know, of you own knowledge how that hawser came to carry away that headgear?

A. By the sheer of the vessel, the steamer sheering—I was not on deck when it happened.

(Testimony of A. L. Laur.)

Q. In about two hours you got the hawser aboard?

A. Yes, somewheres around two hours and a half, may be.

Q. Well, what did the "Nelson" do then?

A. The "Nelson" came alongside and threw a heaving line aboard.

Q. Came close enough to throw a heaving line aboard? A. Yes, sir.

Q. What was the condition of the weather then?

A. It was blowing heavy in squalls from the southwest.

Q. What sort of sea was running?

A. The sea was not very big; it was quite a choppy sea, but no heavy sea; it was a choppy sea.

Q. What did you do with the heaving line when you got it aboard?

A. I hauled it aboard and there was another line attached to it, and this line again was attached to the hawser and the same hawser—no, I bent that heaving line onto the hawser.

Q. On the hawser you had taken in?

A. Yes.

Q. What did the "Nelson" people do with it?

A. They hauled the hawser aboard.

Q. And made it fast?

A. Made it fast again.

Q. That was about what time?

A. That time it must have been about 4 o'clock, close to four o'clock.

Q. In the morning?

A. Yes, I had no time by me.

(Testimony of A. L. Laur.)

Q. On the 13th? A. Yes.

Q. Mark on the chart the letter "D" the position of the "Holden" when the "Nelson" took the hawser aboard this time after the first break.

(Witness does so.)

Q. Now, then, what was the course of the "Nelson" and yourself after the hawser was aboard the second time?

A. I told the captain, I called to him through the megaphone, I says, "Captain, you better get us in toward the American shore, Captain, into smooth water."

Q. What did he say?

A. He did not answer.

Q. Did you call him more than once?

A. No, he was too far away by the second time when I called, he had started out already.

Q. How much hawser was between you and the "Nelson"?

A. I should judge from 100 fathoms to 120 fathoms, I don't know exactly.

Q. That would be between six and seven hundred feet? A. Yes, sir.

Q. He did not answer this hail?

A. No, he did not.

Q. What did he do?

A. He first went in toward the American shore, stood in a while toward the American shore, with the wind on our starboard bow.

Q. What direction did he stand?

A. About south—southeast, or southeast, maybe.

(Testimony of A. L. Laur.)

Q. He stood southeast with the wind on your starboard bow? A. Yes.

Q. How long did he stand in that direction?

A. He stood in that direction about a quarter of an hour or twenty minutes.

Q. The what did he do?

A. Then he kept the vessel off before it.

Q. Before what? A. Before—

Q. Before the southwest wind? A. Yes.

Q. That brought his course about what?

A. That brought the course about east by south, somewheres near this.

Q. And what effect, if any, did that have upon you?

A. Had the effect to bring the wind on to the stern.

Q. Of what? A. Stern of the vessel.

Q. Of the "Holden"?' A. Yes, sir.

Q. What effect did that have upon the "Holden"?'?

A. It had the effect of making the head of the "Holden" come up to the wind again, and got the hawser athwart ships of her bow?

Q. How long did he continue on that course that you have just testified to?

A. Well, he did not continue at all on it, because as soon as he had her on that course she swung around again.

Q. What happened?

A. She swung right around, the vessel swung right around over to about west, and the "Charles

(Testimony of A. L. Laur.)

Nelson'' was then on the port side of the vessel, and the vessel heading then about west, and his line got slack, got all slack and he was on the port side; this line was slack and he was not towing then, and he started then to cross the vessel's bow with a slack line and full speed, went full speed ahead; I was on the forecastle-head and I saw him coming, and one of the sailors came, and I says to one of the sailors, run as quick as you can—

Q. What was that for?

A. I saw the line was going to carry away, going to bust up or something, and if the line carried away aboard the end of it might have killed anyone, it carried away the chock.

Q. What did the sailor do?

A. Ran on top of the deckload.

Q. What happened then?

A. The line carried—

Q. Did he cross the bow? A. Yes.

Q. Going full speed? A. Yes, sir.

Q. Then what happened?

A. As far as I could see this line carried away in the chock.

Q. On board the "Holden"?

A. On board the "Holden."

Q. Do any damage?

A. Not to the "Holden."

Q. Mark with the letter "E" where that happened.

(Witness does so.)

Q. This was about what time?

(Testimony of A. L. Laur.)

A. A little over 4 o'clock.

Q. On December 13th?

A. On December 13th; yes.

Q. Well, did you get the line aboard again?

A. No, we had another line aboard.

Q. Did they get a line aboard?

A. They got a line aboard.

Q. How long were they doing it?

A. Well, it must have been an hour, I should judge; I did not look at the time.

Q. How did they do it?

A. They hove it in by steam.

Q. I do not care about that. How did they get the line aboard again, did they take a boat?

A. No.

Q. How did they get it in?

A. They came alongside again.

Q. And hove it?

A. Threw a heaving line aboard.

Q. And you hauled it in from that?

A. Hauled it in from that, yes.

Q. Did you drift any in the meanwhile?

A. Yes.

Q. Mark the position "F" where you were when the line was taken on board the second time.

(Witness does so.)

Q. Now what did the the "Nelson's" captain do?

A. I told the captain, I said, "Captain, just get me on the starboard tack now, and get in toward the American shore, and if the line carries away again I can take care of myself."

(Testimony of A. L. Laur.)

Q. What did he say to that?

A. Well, he says, "All right, Captain, I will take you over there," something to that effect. I could not tell you exactly the words, but he said, "All right."

Q. Now, you said to him to "get me on the starboard tack"? A. Yes, sir.

Q. "And take me over toward the American shore"? A. Yes.

Q. "If the line breaks again I can take care of myself"? A. Yes, sir.

Q. Sure you said that? A. Yes, sir.

Q. What did you mean by that?

Mr. McCORD.—I object to this question and to this line of questions as leading, the worst form of leading.

Q. What did you mean by that expression that you could take care of yourself?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial.

A. I meant by it if I was on the starboard tack I could sail in toward the American shore and drop my anchor anywhere there.

Q. Do you mean you could sail in independent of the "Nelson"? A. Yes, sure.

Q. The wind was then how?

A. Southwest.

Q. The wind was southwest? A. Yes.

Q. And you were headed?

A. I was headed about south—southeast.

Q. Well, did he keep you on the starboard tack?

(Testimony of A. L. Laur.)

A. Yes, he kept me on the starboard tack.

Q. Where did he take you to then?

A. We went on the starboard tack until he got close underneath the American shore, into this bay on the other side of fresh water bay, I don't know exactly the name of this bay here.

Q. What happened then?

A. We got smooth water, and he hauled in toward Port Angeles.

Q. Then what happened when you got into smooth water?

A. Well, we got into smooth water off Ediz hook and he tried to get the vessel around again and he hauled too much off the wind and the same thing happened again, and he got on the lee side of the vessel and the line cut off across the bow.

Q. The same as before?

A. No, this time it cut across the bow, when he got on the port side of the vessel.

Q. Did he cross the bow?

A. Yes, he crossed the bow.

Q. What was the condition of the line before he crossed the bow, I mean was the line taut or slack?

A. It was slack when he crossed the bow.

Q. What did the line do?

A. The line carried away across the bow.

Q. Mark the point where that happened by the letter "G."

(Witness does so.)

Q. Did you drift any after that?

A. Drifted a little over to the eastward.

(Testimony of A. L. Laur.)

Q. Did you pass the line again?

A. Yes, sir.

Q. Tell us how he passed the line.

A. He came alongside again and threw a heaving line to me.

Q. And made the line fast?

A. Yes, I made the line fast.

Q. What did he do then?

A. He swung around and took us into Port Angeles.

Q. What time did you reach Port Angeles?

A. About 11 o'clock in the morning.

Q. Of the 13th? A. Of the 13th.

Q. He left you there?

A. He left me there.

Q. You anchored there? A. Yes, sir.

Q. Did he say anything when he was leaving you? A. No, he did not say anything.

Q. In giving the bearings that you have given in your testimony here, are they true or magnetic?

A. All magnetic.

Q. Then the bearings are taken according to the compass on the chart? A. Yes, sir.

Q. In your opinion, as a mariner, if the captain of the "Nelson" had complied with your orders as you have testified with reference to keeping you on the starboard tack would the line have parted the second time?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial.

(Testimony of A. L. Laur.)

A. No, sir, it would not. Can I say something about the conversation the first time?

Q. We want all the conversation.

A. The second time after the line parted I told him, I says, "we can anchor on the American shore any way at all and you keep toward it, and if you see you cannot handle me, I can let my anchor over toward the American shore anywhere."

Q. What did he say to that?

A. He said all right, as he said before, and he went and towed us and the line did not carry away and we got in smooth water and there was no occasion to anchor or do anything.

Q. Well, now, as a seaman of experience, state whether or not in your opinion, it was good seamanship to cross your bow at full speed with your tow line as you testified he did on two occasions?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial.

A. No, it was not good seamanship.

Q. You state that you were not on dock when the tow-line parted the first time? A. No.

Q. So that you really did not know what caused it to part? A. No.

Q. When did you see the damage that was done to the "Holden"? A. After it was done.

Q. Did you testify that at 4 P. M. on the 12th Waaddah Island bore east or west?

A. We were east of Waaddah Island a mile.

Q. What was the bearing of Waadah Island then?

A. Waaddah Island was then about west.

(Testimony of A. L. Laur.)

Q. When the "Nelson" came around Flattery when you first saw her were your signals flying?

A. Yes.

Q. How long had they been flying?

A. Been flying a whole day, since daylight.

Q. Were not put up then specially for the "Nelson"?

A. No, they were forgotten to be taken down.

Q. What sort of a vessel is the "Nelson"?

A. Steam schooner.

Q. How big a one?

A. Oh, I don't know what tonnage she is.

Q. About how long is she, do you know?

A. Two hundred feet, maybe, somewhere around there.

Q. Does she carry passengers?

A. At time she does, as far as I understand.

Q. You do not know whether any passengers were aboard at this time or not? A. No.

Q. How old a vessel is she?

A. I do not know how old she is.

Q. How long have you known her?

A. Since I can remember—I can always remember—

Q. About what is the distance from where you lay east of Waaddah Island at 4 P. M. on the 12th to Seattle, in round numbers?

A. About 150 miles, somewhere around there; somewhere around 130 miles. I really do not remember without looking at the chart.

Q. Does that chart run to Seattle?

(Testimony of A. L. Laur.)

A. No, only reaches Port Townsend.

Q. Where you testified you were east of Waadah Island, is that holding ground?

A. Yes, sir.

Q. What was your reason for testifying to that, had you been there before with any vessel?

Mr. McCORD.—I object as leading and as cross-examining his own witness.

Q. What was your reason for stating that you thought it was good holding ground?

Mr. McCORD.—I renew my last objection.

A. I have laid there—about three miles above that place, I laid there once before with the bark “Vida” in a heavy gale.

Q. When was that?

A. This was—I cannot tell exactly the year, but it was the year that the schooner “Meteor” was run down by a steam schooner in the straits in a heavy gale.

Q. What sort of a gale was it?

A. Southwest gale.

Q. When you were sailing across the straits as you have testified, from the point marked “A” to the point marked “B” on the chart, on December 12th, did you speak any other vessel?

A. Yes, I spoke the steamer “Crown Arrogan.”

Q. What did you say to them?

Mr. McCORD.—I object as hearsay and not binding on this libellant.

A. I asked the steamer if he could tow me to Port Townsend.

(Testimony of A. L. Laur.)

Q. What did he say?

Mr. McCORD.—I renew my last objection.

A. He said no, he could not tow me.

Mr. McCORD.—My objection goes to all this testimony.

Q. What did he say?

A. Well, he kept on talking and he says, "I know I cannot tow you, but are you in any immediate danger?" and I said, "No." "Do you want to be taken off?" he asked. And I said, "No; I am all right. I want a tow; if you cannot tow me will you report me to Port Townsend to a towboat company?"

Q. What did he say?

A. He said, "Yes, I will send you assistance."

Cross-examination.

Q. (Mr. McCORD.) You say, Captain, that at the time the "Nelson" came alongside of you that you were located at the point "C" shown on the map?

A. No.

Q. Where were you? A. At the point "B."

Q. Then the point "C" is the point where the line parted, was it? A. Yes.

Q. How far is it from the point "B" to the point "C" shown on the chart?

A. About 35 miles.

Q. Now, I understand you to say that you early in the morning of the 12th was over on the Canadian shore? A. Yes.

Q. And your rudder was gone? A. Yes.

Q. How long had your rudder been gone at that time? A. Been for several days.

(Testimony of A. L. Laur.)

Q. Was there anything else, any of your other equipment that had been carried away beside your rudder? A. Before that time?

Q. Yes.

A. At times, yes, we had lost sails at times.

Q. How about the masts?

A. The masts were in good condition.

Q. At the time the "Nelson" sighted you what was the condition of your masts?

A. The masts were good and all the sails were good.

Q. That was at the time they first came alongside of you? A. Yes.

Q. How were they at the time or shortly after the hawser parted?

A. After the hawser parted?

Q. What was the condition of your equipment?

A. Except the headgear, the headgear was gone.

Q. Did you lose any of your masts at any time?

A. No masts.

Q. Anything else? A. Yes.

Q. What? A. Headgear.

Q. What do you mean by headgear?

A. Three bobstays and one stay.

Q. Where are they located?

A. The bobstays are located underneath the jibboom.

Q. What part of the ship?

A. On the forward part.

Q. How close to the bow?

A. They are on the forward part of the bow.

(Testimony of A. L. Laur.)

Q. Now, at the time they came alongside there what was the condition of the wind?

A. At what time?

Q. In the afternoon, 4 o'clock of the 12th.

A. Light east—northeast.

Q. As a matter of fact, was it not blowing a gale then? A. No, not down there.

Q. Had it been blowing hard during that day?

A. It had been a fresh breeze.

Q. What do you mean by a fresh breeze?

A. I mean a fresh breeze, a breeze that will carry the top-sails.

Q. And at the time the "Nelson" came alongside it was simply a fresh breeze? A. No.

Q. Light breeze? A. Light breeze.

Q. Do you know when the wind came up after the "Nelson" tied on?

A. The wind, as soon as the "Nelson" went out in the straits as soon as he got outside of a mile and a half off the land here, with an easterly wind, the wind will increase always; and as soon as you get underneath the land the wind will calm down.

Q. How close were you to the land?

A. About three-quarters of a mile or a mile; about a mile.

Q. About a mile from Waaddah Island?

A. Yes, sir.

Q. And you laid on the easterly side of Waaddah Island then?

A. I was on the easterly side of Waaddah Island.

(Testimony of A. L. Laur.)

Q. You had been flying your distress signals all day? A. Yes.

Q. And trying to get some one to help you?

A. No, never—trying to get in communication with the station here.

Q. Just tell me why you had the signal calling for immediate assistance flying, if you did not want immediate assistance?

A. Because I was in danger of a gale off Vancouver Island shore, this time I wanted immediate assistance, at 9 o'clock in the morning I was heading right for the beach at that time, the vessel was going right into the Vancouver shore, and I could not get the vessel around at that time, and I would have taken anything because I was in danger then.

Q. And you kept that signal up all day?

A. It was forgotten.

Q. And you forgot the other signal too, did you?

A. Yes, sir.

Q. Left them up all day and forgot about it?

A. Yes, sir.

Q. You know that the "Nelson" came up to you in response to the call for immediate assistance, don't you, from that signal?

A. Yes; I did not know it then. I supposed he did; yes, that is the supposition.

Q. That is a reasonable conclusion, you had it up there. She saw you and she immediately came to your assistance, didn't she? A. I suppose so.

Q. Then she began to tow you, and during the night the wind increased? A. Yes, sir.

(Testimony of A. L. Laur.)

Q. When did it increase—you don't know?

A. I don't know.

Q. You went down and went to bed, did you?

A. Yes—I did not go to bed, I went on the floor.

Q. Went down below? A. Yes.

Q. What were you doing down there?

A. I laid down and went to sleep.

Q. You went to sleep? A. Yes, sir.

Q. You had been up quite a little while?

A. Yes, sir.

Q. Been up several days, pretty nearly all the time for two or three days, hadn't you?

A. Off and on.

Q. And you were worn out?

A. I was not worn out; no.

Q. But you took the opportunity to sleep and went and took it; you could not have stayed up longer?

A. Yes, I could have stayed up for days, yet.

Q. If you were in behind Waaddah Island, and the shore, out of the wind, why did you take any assistance at all?

A. Well, I wanted a tow, and I wanted to get to Port Townsend and make time.

Q. And you did not consider yourself in any danger at all at that place? A. No.

Q. You were not at anchor, were you?

A. No, but I could have anchored any minute.

Q. Now, when the wind came up during the night, what direction was it from?

A. Southwest.

(Testimony of A. L. Laur.)

Q. Blowing from the southwest?

A. From the land.

Q. Then if you had not been anchored that would have carried you out in the straits, if the anchorage had not held?

A. Yes, if we had not anchored.

Q. A southwest wind coming up about 11 or 12 o'clock?

A. It came up somewhere around that.

Q. Now, you never tested that ground at all there, did you?

A. Well, I have not tested it any more than I have tested all the grounds. I have only to take the Government reports; that is all I can take.

Q. Anything in this chart—that is the chart that you had, is it not? A. Yes.

Q. That shows that that is good holding ground?

A. Yes, it shows a slow shoaling of the ground; wherever you see a slow shoaling of the ground you can say it is good anchorage?

Q. When you testified that was good holding ground you were basing it upon the Government chart?

A. Basing it on the Government chart and on my experience, because I have laid up here before to anchor, and that is only three miles further on, and there is about the same depth of water and about the same shoaling of the ground, and I laid up there in much heavier a storm, one of the heaviest gales we had on the coast here, and I laid up there for

(Testimony of A. L. Laur.)

thirty-six hours; so I could reasonably suppose I would lay a little further down here just as easy.

Q. And when the hawser broke about 12:30 you went out on deck? A. Yes, sir.

Q. What kind of wind was blowing then?

A. Southwest.

Q. Pretty hard gale, was it?

A. Blowing heavy squalls.

Q. And then you told the Captain that you could take care of yourself if he took you over to the American shore? A. Yes, sir.

Q. At that time you could not have taken care of yourself? A. Yes, I could.

Q. You could have? A. Yes, sir.

Q. What did you say to him? I understood you to say that you told him to take you in toward the American shore, and you could anchor.

A. After I had my hawser aboard, not when it carried away.

Q. I mean when it was carried away?

A. Well, I could not talk to him when it carried away.

Q. When it was carried away and you were there without a hawser, without anything to connect with, what was your position then with reference to danger? Were you in a dangerous position?

A. I was in about the same position. I was in a dangerous position so far that we might have drifted further, but not in a dangerous position. I was in a dangerous position then, yes, if the wind would have continued.

(Testimony of A. L. Laur.)

Q. If the wind continued you would have been in a dangerous position? A. Yes.

Q. What was the danger to have been expected?

A. That I would have had to drop my anchor over underneath Vancouver shore.

Q. Danger of going on the Vancouver shore?

A. Danger of having to let go my anchor on the Vancouver shore.

Q. Danger of going on the Vancouver shore?

A. To anchor on the Vancouver shore.

Q. You were about midway between the American shore and the Vancouver shore?

A. Somewheres around there.

Q. And the wind blowing southwest would have blown you right over on the Vancouver shore?

A. It might have. You see the chances are that I might have gone one side of Race Rocks or the other side of Race Rocks. That is hard to tell, I could not tell where I would have blown. I might have gone right this side or the other side of Race Rocks, and I would have been all right twice. I was in a dangerous position, though.

Q. And the captain of the "Nelson" came alongside of you and gave you another line?

A. No, he threw me a heaving line, and I gave him his own hawser back.

Q. It was his hawser that broke? A. Yes.

Q. Not yours? A. No.

Q. You were using his hawser? A. Yes.

Q. That was broken two or three times during the night? A. Yes.

(Testimony of A. L. Laur.)

Q. And taking the whole of it, from the time you got up and went on deck along about 12:30 o'clock, the wind was blowing from the southwest and blowing a gale all night?

A. Not all night; not until along towards daylight.

Q. That was along about eight o'clock in the morning?

A. No, the wind stopped about five in the morning.

Q. So that it blew about five hours?

A. Somewheres around four or five hours.

Q. But about that time he got you into quiet waters in the morning?

A. Not by five, though.

Q. What time?

A. About eight or nine o'clock.

Q. Then he tried to tow you into Port Angeles?

A. Yes, sir.

Q. How much lumber did you have on your vessel?

A. Somewheres about twelve hundred and seventy-five thousand feet.

Q. What was it worth?

Mr. KING.—I object as not cross-examination, and the witness has not been qualified to testify to that.

A. I don't know.

Q. Don't you know what its value was?

A. I could tell you in the manifest, if I had the manifest.

(Testimony of A. L. Laur.)

Q. Don't you know the value of that without the manifest? A. I am not concerned with that.

Q. Don't know the value of it?

A. I know it has value.

Q. Don't you know what that lumber was worth per thousand?

A. I am not a lumber merchant.

Q. Answer my question whether you know.

A. No, I don't know.

Q. You do not know?

A. I don't know what its value is.

Q. Don't know the value of that cargo on this trip? A. No.

Q. Have no idea?

A. I may have an idea by looking at the manifest.

Q. I mean, independent of the manifest?

A. No, I don't know.

Q. How much of that lumber did you lose prior to the time the "Nelson" came?

A. About 25,000 feet.

Q. That was of the deckload? A. Yes.

Q. Did you throw off all your deckload?

A. No, only a little of it, about 25,000 feet.

Q. When did you throw that overboard?

A. To straighten the vessel up.

Q. She was badly listed, was she not?

A. Yes.

Q. To what side?

A. She was listed to the port side.

Q. And what was her condition at the time the "Nelson" found you; was she listed then?

(Testimony of A. L. Laur.)

A. Well, I don't know about his navigation.

Q. Did not know anything about navigation?

A. I don't know anything about his navigation.

Q. You do not mean to say that he did not know how to navigate the vessel properly, do you?

A. Well, I could not tell about his navigation of his vessel.

Q. About handling his vessel?

A. To handle the vessel, he seemed to handle the vessel fine alongside the schooner, first class.

Q. He knew how to handle the vessel?

A. To get alongside.

Q. Under all the conditions he knew how to handle her, did he not? A. No.

Q. Don't think he knew how to handle her?

A. There was some conditions that I thought he ought to have done different.

Q. Now, Captain, as a matter of fact, do you want us to believe that it was not extremely dangerous for the "Nelson" to come up alongside of this vessel to throw that line to you?

A. It was not.

Q. It was not dangerous?

A. It was not dangerous; it was not extremely dangerous.

Q. Well, was there not danger of a collision, was there not danger of the "Nelson" getting her machinery injured by the wreckage floating around there?

A. No wreckage floating around.

Q. Did you lose lumber there?

(Testimony of A. L. Laur.)

A. No, the lumber that was lost was lost days before, the lumber thrown overboard, and the balance of the lumber, the deckload, was lashed again.

Q. There was no danger to the "Nelson" at all coming up alongside your vessel?

A. No more than anything alongside the dock here with the wind blowing hard.

Q. Wind blowing a gale, you say, from the southwest? A. Yes.

Q. Did not she come up to you during the night on three or four or five different occasions?

A. Not three or four or five.

Q. Three?

A. Two; the third one was in the morning.

Q. And in the night she stayed with you?

A. Yes.

Q. After she had broken her hawser, she came up to you within twenty feet, you say? A. Yes.

Q. And threw you a line? A. Yes.

Q. And stayed with you all night?

A. Yes.

Q. And you say there was no danger connected with that?

A. No more than the danger to tugboat companies, to vessel taking a tow, some danger.

Q. Was there not more danger for a vessel like the "Nelson" than for a smaller tug to come alongside a vessel?

A. There are plenty of tugboats the same size of the "Nelson."

Q. There are? A. Yes.

(Testimony of A. L. Laur.)

Q. You know the construction of the "Nelson"?

A. No.

Q. You know what sized boat she is?

A. No, I do not.

Q. I want to ask you, captain, if you do not consider that the "Nelson" put herself in a position of danger at the time she came up to give you a hawser the second time?

A. Well, I am no judge of this at all. I don't know how the "Charles Nelson" would handle. The captain of the "Charles Nelson" knew what he was doing if he was putting the "Charles Nelson" in danger. I could not tell. He knows how the boat handles. It might have been a dangerous position, but if it was, it is for him to testify. But it did not seem to be a dangerous position for the "Charles Nelson."

Q. The "Nelson" is a regular tugboat?

A. No, but she does a lot of towing.

Q. Does she do towing?

A. Yes, does quite a lot of towing, quite often.

Q. You say you told the captain that you did not want this considered a matter of salvage, but that you wanted it considered a matter of towing?

A. Yes, sir.

Q. You told him that, did you?

A. Yes, sir.

Q. Why did you make this statement to him if you did not think it was in fact a case of salvage?

(Testimony of A. L. Laur.)

A. Because whenever a vessel has her rudder lost, or is found with her masts lost, I know whenever a steamer can get a vessel like this, she always tries to get salvage out of her, and he might have been thinking or might have tried to make a salvage case out of this, and that is the reason I did not want him to; I wanted to inform him first of all I wanted towage; I did not want any salvage; I was not in a dangerous position.

Q. Yet, at the very same time, when you were not in a dangerous position, you had been flying your signals all day and you knew a southwest wind might come up at any time and blow you over to the Vancouver shore.

A. I was in a dangerous position in the morning.

Q. Were you not in a dangerous position all day, in that condition at that time?

A. No, not after 10 o'clock, when the vessel started to get stern way I went over to the other shore.

Q. If at any time the wind had changed to the southwest during the entire day, up to the time that the "Nelson" came to your assistance, there was danger of you being blown over to the Vancouver shore, was there not?

A. Not as long as I had the vessel on the starboard tack.

Q. If the wind came the other way?

A. As long as the vessel—if the wind did haul

(Testimony of A. L. Laur.)

around to the southwest at any time I would have been all right, because the vessel was on the starboard tack; the wind was on the starboard side of the vessel, and she would have just swung around and gone into the American shore; that is what I wanted to do.

Q. You mean to say, captain, that you considered that it was worth about \$200 to carry you to Port Townsend and nothing more, in your condition?

A. In my condition it would have been worth common towage rates.

Q. That would be worth about \$200?

A. I do not know exactly what the scale is.

Q. When the "Nelson" took hold of you and carried you what would be a distance of about 55 or 60 miles to Port Townsend—

A. A little more.

Q. How much—a hundred miles?

A. No; you can check it off on the chart.

Q. I do not care about the exact distance. You consider, now, as a mariner, and your experience on the sound here, with your vessel in that condition in which the "Nelson" found her, and the "Nelson" put herself in a place of danger in towing you to Port Townsend that that was only worth \$200? Is that it?

A. If he had said he wanted \$300 I would not have taken him.

(Testimony of A. L. Laur.)

Q. You think it would not have exceeded three hundred dollars in worth?

A. No, sir. If he had said \$300 I would not have taken it.

Q. Now, what do you mean by common towage rates, that is for towing a vessel in good condition herself, is it not? A. Yes.

Q. It is not towing a derelict?

A. This was not a derelict.

Q. She was without a rudder, was she not?

A. Yes.

Q. Would the towage rates based upon towing a vessel in good condition apply to one in the condition yours was in? A. Yes.

Q. Would it not be worth more to tow one in the condition yours was in?

A. It might have been some of them—the “Charles Nelson” I knew because, might think there was a chance to get a good job.

Q. You were going to make a bargain?

A. Yes.

Q. And you were trying to make the best you could for yourself.

A. No bargain was made.

Q. No bargain was made. The captain did not respond when you said you wanted a towage contract; he did not tell you he was willing to make any towage rates, did he?

A. Yes, he did; he said, “All right, I will tow you.”

(Testimony of A. L. Laur.)

Q. I will tow you for towage rates?

A. He did not say for towage rates. And I says, "Now, captain, I will not take your line except you consider this a towage job; he says, "All right, I will tow you."

Q. And yet, considering the dangers that the "Nelson" experienced during that night, the condition that you were in, considering the wind and the weather, the fact that you had been a short time before in a helpless condition, you still think that a fair reasonable towage compensation would be less than \$300, do you, from where you were picked up by the "Nelson" into Port Angeles?

A. We both took chances. I took a chance of getting a cheap towage, and he took a chance of picking up a couple of hundred dollars in a few hours. And I sustained damage; I lost my bob-stays, lost several hundred dollars' worth of gear there, and she lost, I suppose, her tow-line. We both took a chance at it.

Q. And you still think, that in considering the condition of the weather and the danger that that would be a fair compensation, do you, for the work that she did for you? A. I did not—

Q. I ask you now.

A. This thing is a thing to take up with the owners, because I take a chance. I had nothing to do afterwards, what I considered it worth afterwards; I only want to say what I thought it was worth when I took him.

(Testimony of A. L. Laur.)

Q. You are qualified, captain, as a master mariner. You say you know about towage rates and everything else connected with marine work, and I want to ask you now what you consider the towing of the "Nelson" worth, in the light of your personal knowledge, of your vessel from the place where you picked her up to Port Angeles?

A. Well, I could not tell you.

Q. Well, you say you knew now. Tell me. You qualified as an expert; now tell me.

A. I would not make—I would not answer for the rates; I could not tell you what it is worth. It is worth to the "Holden," it is worth towage, that is all, that is what it is worth to the "Holden."

Q. What would be the reasonable value of the services of a boat like the "Nelson," in doing the work that she did do in rendering you assistance there and towing you to Port Angeles, from the place where you were picked up?

A. It is worth to the "Holden" towage—

Q. Answer the question.

A. How can I answer the question?

Q. I ask you what it is worth; you know what was done; you know the conditions under which it was performed?

A. Yes.

Q. And the services were performed, and you knew the condition of the weather. You know all about it; you know the value of the "Nelson" and you know the value of the "Holden." You know

(Testimony of A. L. Laur.)

how much money was involved in it, so far as the boats are concerned.

Mr. KING.—I object. There is no showing that he knows anything about the value of the “Holden” or how much money was involved.

Q. Now, you answer my question. Tell me, if you know, captain, what the reasonable value of these services were that were rendered by the Nelson?

A. Well, the loss of time ought to be reasonably paid, and may be some allowance for the line that was torn.

Q. How many hours was she engaged with you?

A. She was engaged with me—

Q. About 18 or 20 hours? A. About that.

Q. You know the value of the “Nelson”?

A. No.

Q. You know the value of your boat, about sixty thousand dollars? A. When she was new.

Q. You had a cargo on there worth fifteen or twenty thousand dollars, didn't you?

A. I could tell you by looking at the manifest.

Q. That is about it. Now, taking into consideration the amount of the cargo, the value of your boat, the danger the “Nelson” incurred, the condition of the weather, and the time that she expended, the danger to herself, I will ask you what would be, in your judgment, the reasonable value of the services that were rendered?

(Testimony of A. L. Laur.)

Mr. KING.—I object to the question, because it involves a salvage proposition, and he only agreed to a towage proposition.

(Question read to witness.)

Q. Whether you call that a towage service or whether you call it a salvage service, what were these services worth?

A. I could not tell you.

Q. You do not know.

A. I do not know. I could not tell you because I would have to tell you that we expected a towage to Port Townsend, and we did not get it; we got to Port Angeles. I could not tell you what it is worth because I do not—it was worth less to me than the towage to Port Townsend.

Q. You do not know, then?

A. It was worth the towage of the vessel.

Q. Nothing more. Worth about \$200, is that what you want to say?

A. I don't want to say that, either.

Q. I want you to tell me.

A. I know what it was worth to my vessel. I do not know what it worth to the "Nelson."

Q. I did not ask you what it was worth to the "Nelson," or what it was worth to anybody else. I ask you what was the value of that service rendered to you during the 20 hours.

A. I do not know the value to the Charles Nelson or the value to me.

(Testimony of A. L. Laur.)

Q. I say what would be the value generally, in the open market for this service. What would it be worth to any boat like the "Nelson" to perform that kind of service that was rendered to you?

A. I do not know what price they put on it.

Q. Then you cannot answer the question?

A. I cannot answer the question.

Q. Now, as a matter of fact, there was a big swell at the time she came to you, was there not?

A. There was quite a big swell; it was a choppy sea.

Q. Big westerly swell? A. Choppy sea.

Q. There was a severe east wind blowing, was there not? A. When?

Q. At the time she came up to you?

A. One minute; was this, do you ask, the time she came to Waaddah Island?

Q. Yes.

A. There was no southwest swell there—I thought you meant here.

Q. Was there an east wind blowing when they came up to you at Waddah Island.

A. Very light east-northeast.

Q. Was it not one of the biggest ones you ever saw?

A. No. There was no southwest swell there. I thought you asked about the time when she came alongside here—you jump over here now.

(Testimony of A. L. Laur.)

Q. Were there any spars or wires or ropes attached to your vessel and drifting alongside of it at the time the "Nelson" came up? A. Yes.

Q. What were these?

A. It was a jury rudder.

Q. What is that for?

A. To steer the vessel with.

Q. How far alongside was it?

A. It was astern.

Q. And how is that constructed?

A. It was constructed with two wires on each end.

Q. Cables? A. Yes.

Q. What were the size of the spars?

A. The spars, about thirty feet long.

Q. Two of them? A. One.

Q. Just one spar? A. Just one spar.

Q. You had another spar across the rail in some way? A. Yes.

Q. Where was that located?

A. It was right over the stern.

Q. You did not put your anchor down?

A. No.

Q. How long had you been in that position when the "Nelson" came up at Waaddah Island?

A. I was just in there.

Q. How long had you been there?

A. Well, I hadn't been there; he came alongside by the time I was there.

(Testimony of A. L. Laur.)

Q. By the time you were there? A. Yes.

Q. You drifted in there?

A. Yes, I sailed in there slowly.

Q. Had not put your anchor down?

A. No.

Q. Now, at the time he came up to you, you were utterly helpless?

A. No, I was not helpless. I sailed all the way over from the Vancouver shore to the American shore.

Q. It was just getting dark?

A. It was daylight yet.

Q. It was just about dark?

A. It was four o'clock.

Q. Raining or snowing or what?

A. No, nothing.

Q. When you told the captain that you wanted to be towed, to be treated as a towage of the ship and wanted a price, he told you he would not give you any price? A. Yes.

Q. He said I will not fix any price?

A. Yes.

Q. He says, "If you want any assistance, I will render assistance"? A. No.

Q. Did not say that?

A. No, he did not say that.

Q. If you did not want assistance would go on his way—did he not tell you that?

A. No, he did not.

(Testimony of A. L. Laur.)

Q. You say there was no wreckage floating around there at all? A. No, not a bit.

Q. Not a bit?

A. Except this jury-rudder astern, that was all there was floating there.

Q. If that spar or any other wrecking was there and it had got in the propeller of the "Nelson" there was liability of getting in trouble?

A. There was no wreckage there.

Q. If there had been any?

Mr. KING.—I object as not proper cross-examination and as incompetent, irrelevant and immaterial.

Q. There is always danger with the wind blowing as it was there then, of a boat like the "Nelson" getting wreckage into her propeller and disabling herself, is there not? A. No.

Q. If there had been small wreckage or wreckage floating around that ship, and she came up alongside in that kind of wind, there was danger of getting this in her propeller and injuring her, was there not?

A. If there had been, but there was not.

Q. I say if there had been?

A. Does this apply to this case?

Q. Answer my question.

A. Which way do you want it?

Q. I want to say, if there was, as a matter of fact, wreckage floating around your ship and the wind that existed at that time, that there was danger of the "Nelson" or any other ship of getting the wreckage into her rudder and disabling her?

(Testimony of A. L. Laur.)

Mr. KING.—There is nothing to show that there was any such condition existing at that time.

A. If there had been wreckage there would have been danger to the “Nelson.”

Q. That is your answer?

A. If there had been wreckage there would have been danger to the “Nelson.” The wreckage attached to the vessel or wreckage floating around.

Q. Any of these wire cables that were attached to the jury-rudder?

A. That depends where the wreckage was; if there was any wreckage close to the vessel, there would have been no danger. If there was three or four hundred feet astern of the vessel there might have been if he did not look out.

Q. Might have been danger? Was there not danger connected with the “Nelson” coming up along there with your jury-rudder there and these ropes on it? A. No.

Q. Of getting tangled in the wires?

A. No, there was no danger of that, because he could see that; it was daylight.

Q. In getting up close to your vessel was there not danger in getting entangled with the spar or wires? A. No.

Q. Coming up close enough to get a line over to you? A. No, there was no danger there.

Q. Was it not raining that night or snowing?

A. Snowing that night later on, as far as I know. I was not on deck when it snowed.

(Testimony of A. I. Laur.)

Q. You want the Court to understand you that there was no danger to a vessel like the "Nelson" coming alongside there of your schooner in a southerly gale and getting close enough to put a line to you—you want the Court to understand there was no danger?

Mr. KING.—He has not testified that there was any southerly gale when he put the line on the first time.

A. Does this apply to here?

Q. Yes. A. No, there was no danger.

Q. Then, when she came up to you the second time, after the line parted, the first time she came alongside then there was danger, was there?

A. The captain of the "Nelson" could say this, because I do not know how he handles the boat—how the boat does handle, or which way he does handle it.

Q. Then you are not able to say whether he occupied a position of danger coming alongside of you after the line parted?

A. I am not able to say.

Q. Nobody can say that but the captain of the "Nelson"?

A. Except Captain Nelson himself.

Q. He is the only man that is competent to say what the danger was when he came up to you to hand you the line the second time?

A. No, he is not the only man.

Q. Who is?

A. Any man that has handled the "Nelson" is competent to say; he or any man that knows what the "Nelson" can do, is competent to say so.

(Testimony of A. L. Laur.)

Q. But you are not competent to say?

A. I am competent to say that far that I know any steamer, most any of them, these steam schooners, would have been able to come alongside without any danger. I do not know about the "Nelson"; she might be worse than any of the others; I don't know about her.

Q. Now, you complain that the "Nelson" did not handle herself properly in towing your vessel, don't you? A. Yes, sir.

Q. After she got hold of you?

A. Yes, sir, after the wind hauled to the southwest.

Q. Now, I will ask you if the position of the "Nelson" was forced upon her, or could have been forced upon her by the failure of the vessel, your vessel, to steer in the absence of your rudder, could she have been pulled around in the position you say she went into by reason of the inability of your vessel to steer?

A. No. If the captain had gone, as soon as the southwest wind came on—he saw that the vessel would not handle before the wind, if he had gone underneath the American shore and held the vessel there, he could have brought to anchor or held her there.

Q. You were hitched on to the stern of the "Nelson" with your hawser? A. Yes.

Q. Inasmuch as your vessel would not steer but would drift around, would not that pull the "Nelson" around the way she was pulled around?

(Testimony of A. L. Laur.)

A. She would not drift, the vessel would come up to the wind, if the "Nelson" wanted to pull her off the wind then she would not steer; the "Nelson" did not have power enough to hold her.

Q. About 8 A. M. of the 13th where were you?

A. To here. (Indicating letter "G.")

Q. How close to the Vancouver shore?

A. At eight o'clock?

Q. That is in the morning?

A. Well, about six miles off the Vancouver shore. You mean the first time?

Q. I mean when she parted her hawser at midnight, 12:30. After that she drifted over toward the shore? A. Yes.

Q. Got over there pretty close to the shore, a couple of miles of the shore?

A. Inside of three miles.

Q. Got within three miles of the shore? That was not at 8 o'clock in the morning, that was between 12:30—

A. Between 12:30 and 4 o'clock. You can find the right time in the logbook.

Q. After she broke loose she drifted over toward the Vancouver shore, with the wind blowing as it was, you were in a position of extreme danger of going on the Vancouver shore?

A. We could probably drop anchor.

Q. Going ashore if you could not hold?

A. If I could not hold.

Q. There is no anchorage there?

A. There is anchorage there.

(Testimony of A. L. Laur.)

Q. You would have to get in the boats?

A. I could get anchorage.

Q. You were helpless at that time, were you not, so far as navigating or steering your vessel?

A. Just at that time; if I could get on the starboard tack; it is dependent on the starboard tack.

Q. If you did not get on the starboard tack you would have gone ashore?

A. No, I would have let go my anchor.

Q. And trust to your anchor to save you?

A. Yes.

Q. You say that then between 12:30 and 4 o'clock, when you were within three miles of Vancouver shore, with the wind blowing as it was and your hawser parted as it was from the "Nelson," that you were not in a position of extreme danger to your vessel? A. Extreme danger?

Q. Yes. A. It was not extreme danger.

Q. It was danger?

A. It was danger; yes.

Q. You were in a dangerous position?

A. I was in a dangerous position, and it just depends on the wind which way she would go.

Q. And the "Nelson" came back in that wind and gave you a hawser the second time, and incurred no danger to herself; is that what you mean?

A. No.

Q. She did incur danger?

A. I could not tell you that because that is depending on how the "Charles Nelson" handles; that is a matter of how the "Charles Nelson" handles.

(Testimony of A. L. Laur.)

If the "Charles Nelson" handles the same as the rest of the steam schooners there is no danger.

Q. There was danger in that position if the "Charles Nelson" did not assist you, of your going ashore on Vancouver island?

A. No, I would not have gone ashore.

Q. Then what was the danger, why were you in a position of danger if there was no danger of going ashore?

A. Danger any time. I would have been in danger any time if I had not let go my anchor here.

Q. You could drop your anchor there in that gale and save yourself? A. Yes, sure.

Q. No doubt about it?

A. No doubt about it.

Q. Then you never were in a position of danger at all with your vessel?

A. I was at times; there is always a certain danger underneath the Vancouver shore; there is always certain danger underneath the Vancouver shore.

Q. Always, that is what I understand. And there would be greater danger with the wind the way it was blowing, like it was that night and you cut loose from the "Nelson"? A. Yes.

Q. And the "Nelson" came back there and she eliminated that danger as much as possible by staying with you? A. Yes.

Q. And she helped you out of your position of danger and brought you to Port Angeles?

A. Port Angeles.

(Testimony of A. L. Laur.)

Q. Did you not think that the line parted because of the vessel's refusal or failure of the "Holden" to steer? A. When?

Q. When it parted the first time.

A. The first time.

Q. The second time?

A. The first time I did not think so.

Q. How about the second time?

A. The second time it parted because he went across our bow full speed.

Q. So that you do not think the refusal of the "Holden" to steer had any effect upon the parting of the line?

A. Yes, it certainly had; it certainly affected it.

Q. What effect?

A. It had an effect so far, instead of keeping—instead of going in shore, he tried to steer straight across, and this he could not do with the "Holden" not steering.

Q. Well, now, is it not a fact that the failure of the "Holden" to steer had a material effect upon the parting of the line, under the conditions that existed there?

A. Yes, it certainly affected it; yes.

Q. The ordinary towing, if she had been towing the "Holden" in the ordinary condition, the "Holden" with her rudder in good shape, there would have been no parting of that line, in your judgment?

A. I do not know, as far as I understand, the line had been strained a great deal by towing the boat off the Eureka bar.

(Testimony of A. L. Laur.)

Q. If the line had been all right?

A. If the line had been new.

Q. If the line had been new and he had been towing the "Holden," not in a disabled condition, then in your judgment that line would not have parted?

A. No.

Q. Therefore it must follow that the condition of the "Holden," in refusing to steer had a tendency to part the hawser?

A. Coupled with the condition of the line.

Q. Now, it was extremely dark that night and rainy, you could not see anything?

A. Oh, yes.

Q. Could you see? A. Yes, sir.

Q. Was it snowing or raining?

A. It was not snowing.

Q. After midnight you say?

A. It was not snowing then.

Q. Was not raining?

A. It was raining, I think, at times.

Q. Was not any moon, was there? A. No.

Q. No stars, still it was not dark?

A. Well, you could see.

Q. It was not dark?

A. It was dark but we were able to see.

Q. It was a dark night?

A. Yes, it was a dark night.

Q. You could not tell whether you were close to the Vancouver shore or close to the American shore?

A. Yes, sure.

Q. Could you see the shore?

(Testimony of A. L. Laur.)

A. Well, I could see the shore line, I could see the lights.

Q. See the lights on shore?

A. See the lights, see the Race Rock. I could tell exactly where I was by taking bearings of Race Rocks.

Q. You could see Race Rock on that night?

A. Yes, sir.

Q. You did see it?

A. Yes, sure; that is how I got bearings; that is the bearings I took that night.

Q. So that you could tell where you were?

A. Yes, sir.

Q. Now, Captain, after you had drifted over to the Vancouver shore, I will ask you, suppose that the "Nelson" had left you, if you would not within a very short time have drifted on that rocky shore of Vancouver island?

A. Well, there is a chance. I can tell you exactly the way we drifted; we might have drifted between the rocks, Race Rocks and the island. We could see the lights in Victoria, between Race Rock, on that side of Race Rock what time we drifted in towards them.

Q. Now, as a matter of fact, in your judgment you would have drifted ashore there in a very short time? A. Not ashore.

Q. If the "Nelson" had decided that it was too dangerous for her to come to your assistance?

A. Not ashore. I would have dropped my anchor.

(Testimony of A. L. Laur.)

Q. Your anchor would have held on the Vancouver shore? A. I am pretty well sure.

Q. How about the anchorage on the Vancouver shore? A. That is a dangerous coast.

Q. It is a dangerous coast, and it might be that you could not have held the "Holden"?

A. No, I don't know, I would have taken a chance.

Q. You would have taken a chance, but you know from your experience as a mariner that it is never safe to try to hold with your anchor on Vancouver shore, and that is the reason you were trying to get to the American shore?

A. It is not good seamanship to go over on the Vancouver shore, but vessels all along this beach have held on with their anchors, all along there.

Q. But it is bad holding ground, so considered?

A. It is considered not as good holding ground as the American shore.

Q. Is it not considered bad holding ground, to try to hold a vessel with an anchor near these rocks on the Vancouver shore?

A. It is not considered bad holding ground, because no vessel ever goes there, it is a lee shore, while the American shore is safe anchorage at all times.

Q. Now, assuming that the "Nelson" was a good vessel and was doing what she could to keep you on a proper course and not intending to go over on the Canadian shore, but suppose by reason of the failure of the "Holden" to steer, she was dragging the "Nelson," and drifted over there—not voluntarily,

(Testimony of A. L. Laur.)

that she did not go there voluntarily, but that she drifted over there, the "Holden" dragging her along. I will ask you to say whether that was due, in your opinion, to any fault or negligence on the part of the "Nelson."

A. The "Nelson" could at any time have gone to the American shore if she wanted to.

Q. Assuming that she could not?

A. Yes, but she could.

Q. Assuming that your boat dragged her over there?

A. Any time she could go to the American shore, towards the American shore; she would have been all right, the vessel would have steered fine.

Q. Then do you say that she went over toward the Vancouver shore voluntarily or intentionally?

A. I don't know if he went intentionally; I don't know his reasons for going.

Q. If she did not go there voluntarily, if the Captain did not take her there intentionally, then it must have been because he had an unwieldly tow and he was pulled there?

A. Any time that he wanted to go to the American shore he could do it, any time that he wanted to go. I will explain to you, a vessel may go head to the wind any time and as long as the wind was southwest, that would be to the head of the vessel, now, any time that he wanted to go this way toward the American shore he could do so without any danger, but the danger came in when the vessel started to steer bad. As soon as he got before the wind, that

(Testimony of A. L. Laur.)

is the time he might have drifted over, but in case the captain would see that he was getting over too far, if he would haul the vessel over this way again, she would have been just like towing in the bay.

Q. Then the captain had no business, in the exercise of good seamanship, in getting over as close to the Vancouver shore as he did?

A. No, he had not.

Q. And if he went over there because he was forced to go by your tow, he could not prevent it?

A. Yes, he could prevent going, by pulling for the American shore.

Q. You think he could prevent it?

A. Yes, any time he wanted to.

Q. If you had struck on the Vancouver shore you would have gone to pieces pretty soon in that sort of a gale?

A. Yes, that is the supposition.

Q. You think so, don't you?

A. No, I don't think so. That is the supposition, there is a sand beach around there.

Q. What vessel did you speak that morning?

A. The "Crown of Arrogon."

Q. Who owns that vessel, do you know?

A. It is an English vessel.

Q. What sort of a vessel, a steamer?

A. Big steamer.

Q. She could not tow you?

A. She did not want to tow me.

Redirect Examination.

Q. (Mr. KING.) From point "B" where the "Nelson" towed you to the point "C" where you

(Testimony of A. L. Laur.)

broke the tow-line the first time, what was the direction the wind? A. The wind?

Q. Yes.

A. Part of the time, up to 8 o'clock when I was up, the wind was east-northeast; when I came on deck the wind was southwest.

Q. When the wind was east-northeast was that a fair wind or a head wind? A. Head wind.

Q. Does that make the tow hard or easy?

A. No, it makes it easy.

Q. Now, between "C" and "D," "C" being the point where the hawser broke, and "D" where you took it aboard again, if you had been on the star-board tack, at any time between these points, would there have been any danger in going on the Vancouver shore? A. No.

Q. Counsel spoke about your list, was your list as great or greater at 4 P. M. down at point "B" than it was any time during the voyage?

A. No, not as great.

Q. What decreased it, if anything?

A. I jettisoned the cargo.

Q. Now, during all the times that the "Nelson" came up to you and passed these tow-lines, in your opinion as a mariner, if the "Nelson" was properly manned and handled, was she in any danger?

A. No.

Q. How far was this jury rudder astern of you?

A. The furthest extent was forty feet astern.

Q. The furthest end?

A. The furthest end.

Q. And the other end was?

(Testimony of A. L. Laur.)

A. Close underneath the quarter.

Q. Was there any gear or rigging of any kind over the side except that?

A. There was a piece of planking over the side, over one side, sticking out about three feet.

Q. Was that a part of the jury-rudder?

A. No, it was an outrigger that had been used with another jury-rudder?

Q. Where was this?

A. Right across the stern.

Q. On the top side?

A. On the top side, over the top. One side stuck out and about three feet on the other side, it was flush with the rail on the other side.

Q. How far could you see Race Rock that night?

A. I saw—

Q. How far could you see them through the darkness of the night?

A. I could see Race Rock 15 miles when it was clear, when I came on deck.

Q. Was there any time when it was blowing from the southwest that the "Nelson" could not have kept herself and the "Holden" from the Vancouver shore?

A. No, that is as far as I could judge from the "Nelson," the way she did. Any time she could have kept the vessel from the shore.

Q. Did you ever know a tow-line being broken by the tow shooting across the bow of the ship, when she was provided with a rudder?

(Testimony of A. L. Laur.)

A. No. I never seen a tugboat doing it. I never saw a tugboat attempt to cross the bow, either.

Q. Now, when the "Nelson" crossed the bow of the ship on the two occasions that you testified to, would she, in your opinion, have broken that tow-line if she had gone slowly?

A. No, she would not.

[**Testimony of Ed. Carlson, for Claimant.**]

ED CARLSON, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. KING.) How old are you?

A. Thirty-eight.

Q. What is your business? A. Seaman.

Q. Were you seaman on board of the "Holden" last December? A. I was mate.

Q. Mate of the "Holden"? A. Yes.

Q. Where was the "Holden" at 4 o'clock in the afternoon of December 12th?

A. East of Waaddah Island.

Q. Can you point out the place on the chart?

A. Yes, I can. She was right in here somewhere.

Q. Where this is marked "B"?

A. Yes, sir.

Q. What was the condition of the wind and weather between four and five o'clock on that day in the afternoon?

A. Light wind, about east-northeast.

Q. The weather?

A. Clear, perfectly clear.

Q. Do you know what soundings the "Holden" got when she was there? A. Forty fathoms.

(Testimony of Ed. Carlson.)

Q. Do you know what anchors she was provided with? A. Yes.

Q. What were they? A. Three anchors.

Q. How much cable?

A. One hundred and eighty fathoms of cable.

Q. Do you know if any preparations were made to anchor? A. Yes, sir.

Q. What preparations were made?

A. All ready to drop it in a moment.

Q. How big a boat is the "Holden"?

A. Close on to 1040 tons.

Q. How many masts? A. Four masts.

Q. What is the rig? A. Schooner.

Q. What signals was she flying at 4 o'clock December 12th?

A. She was flying distress signals; forward a white flag, square flag with a ball underneath and "N. C." aft.

Q. What did these signals mean?

A. I don't know nothing about them signals?

Q. You know they are distress signals?

A. Yes, sir.

Q. When did you first see the "Nelson"?

A. A little before 4 o'clock.

Q. Where was she then?

A. She was rounding the cape, inside of the cape.

Q. What cape?

A. Cape Flattery.

Q. Did she come and speak the "Holden"?

A. Yes, sir.

Q. About what time did she get to the "Holden"?

(Testimony of Ed. Carlson.)

A. Around four o'clock.

Q. How close did she come?

A. Oh, she was within forty or fifty feet, I guess.

Q. Well, who hailed first?

A. The captain of the "Nelson."

Q. Were you on deck at the time?

A. Yes, sir.

Q. Did you hear it yourself? A. Yes, sir.

Q. Who first hailed?

A. The captain of the "Nelson."

Q. What did he say?

A. "What do you want, Captain?" he said.

Q. Did the captain of the "Holden" answer him?

A. Yes, sir.

Q. That was Captain Laury who just testified?

A. Yes, sir.

Q. What did he answer?

A. He asked if he would tow him to Port Townsend.

Q. What reply did he get, if any?

Q. What did the captain of the "Nelson" say?

A. He said, "All right, I can do that."

Q. What happened, did he stop?

A. The captain asked him how much.

Q. Did the "Nelson" stop?

A. She stopped, certainly, stopped before he spoke to the captain.

Q. Go on. Had he turned around or did anything, that is what I want to know.

A. Yes, he turned around.

(Testimony of Ed. Carlson.)

Q. Well, go on; what did he say when he said, "I want to be towed to Port Townsend," what happened after that?

A. The captain asked what he would charge to tow him to Port Townsend.

Q. What did he say?

A. He said he would not make any agreement for towing.

Q. Who said that?

A. The captain of the "Nelson."

Q. What did the captain of the "Holden" say to that?

A. He said he would not take his line except he would consider it a towage and not salvage.

Q. What did he say after that, the captain of the "Nelson"?

A. Well, the last time our captain told him, he said, "All right, I will tow you."

Q. Then the line was passed?

A. Yes, they passed the line afterwards.

Q. What wreckage, if any, was there about the "Holden"?

A. There was no wreckage there.

Q. What do you know about this jury-rudder that has been testified to?

A. It was a jury-rudder.

Q. Was that there?

A. That was there; yes.

Q. How far out was that from the "Holden"?

A. It was about the length of a spar.

Q. Well, how far is that?

(Testimony of Ed. Carlson.)

A. Thirty-five or forty feet.

Q. Well, what happened after the line was taken aboard?

A. Well, made fast.

Q. What direction was the wind then?

A. East-northeast.

Q. How strong? A. Slight wind.

Q. How did the "Holden" tow?

A. Towed fine.

Q. About what speed, do you know?

A. I could not tell you, sir.

Q. Well, were you on deck all night?

A. No, sir, I was below from 8 to 12.

Q. You were below from 8 to 12?

A. Yes, sir.

Q. Then you were on deck from 4 to 8?

A. Yes, sir.

Q. Whereabouts were you at 8 o'clock when you went below?

A. I went below at 8; we were a little to the west of Clallam Bay, I guess.

Q. Well, you came on deck when?

A. 12 o'clock.

Q. Where was the vessel then?

A. Well, I could not tell you the position then, but it was off Race Rocks, because you could see Race Rocks light then.

Q. What was the condition of the weather at that time?

A. Wind southwest, blowing pretty hard, rain squalls and snow at times when I got up.

Q. Had she parted the hawser then?

(Testimony of Ed. Carlson.)

A. No, sir.

Q. When did the first hawser part?

A. Half-past twelve.

Q. Were you on deck then? A. Yes, sir.

Q. Tell us how that happened?

A. Well, I felt when the hawser parted, and I ran forward and I saw the hawser was lying over the side and our bobstays were all gone.

Q. Then what did you do—did you take any steps to take the hawser in?

A. Well, I called all hands on deck to get the hawser in.

Q. Did you get it in? A. Yes, sir.

Q. How long were you getting it in?

A. Two or three hours.

Q. Can you point out on the chart where you were when the hawser parted?

A. Well, I haven't got any bearings. I can only give my judgment; I never took any bearings.

Q. Well, when did they pass the hawser again?

A. Passed it again as soon as we got the hawser aboard; they came alongside and got the hawser aboard the steamer again.

Q. How close did they come?

Q. As close as he could reach with a heaving line.

Q. How much sea was running?

A. Oh, there was not much of a sea running.

Q. What time in the morning was it when they got the hawser aboard again, the second time, to your recollection?

A. Somewheres around four o'clock.

(Testimony of Ed. Carlson.)

Q. How long did he tow you then?

A. An hour or so, or half an hour.

Q. Were you on deck all this time?

A. Yes, I was on deck.

Q. You did not go below at four o'clock?

A. No, I anticipated the hawser parting at any time.

Q. When did it part again?

A. Parted again about half-past four, I guess.

Q. Where was that?

A. I haven't got any bearings. I did not take any bearings.

Q. How long before you got it passed again, after it parted the second time?

A. It was about half-past five when he had it aboard the second time.

Q. Half-past five in the morning of December 13th?

A. Yes, sir.

Q. When did it part again?

A. That was outside of Port Angeles about 10 o'clock.

Q. Of the same morning?

A. Of the same morning.

Q. How long were you getting it aboard then?

A. Then it did not take long.

Q. Well, how did it come to part outside of Port Angeles?

A. We went one way and the vessel sheered the other way.

Q. Did you see the "Nelson" cross the bow of the "Holden" at any time?

(Testimony of Ed. Carlson.)

A. No, I was not on deck then, I was below, forward somewhere.

Q. Did you hear Captain Laury somewhere, the captain of the "Holden," give instructions to the captain of the "Nelson" or hail him about towing?

A. Yes.

Q. What was said and when and where?

A. Well, he told him to get the vessel over to the American shore.

Q. When was that?

A. That was when the hawser parted the first time—both times he told him.

Q. Did not say anything else? A. No.

Q. Nothing but to get the vessel over to the American shore? A. Yes.

Q. Did the captain of the "Nelson" answer anything? A. I don't know.

Q. You did not hear him answer?

A. I did not hear him answer.

Q. Did he say anything about how the ship would steer? A. No.

Cross-examination.

Q. (Mr. McCORD.) What sized anchor did you have there that you were about to put overboard?

A. I do not know the weight of the anchor.

Q. Do you know Captain Laury, what the weight of the anchor was?

Capt. LAURY.—About four thousand pounds.

Q. Now, you say there was about 240 feet of water there, 40 fathoms?

Mr. KING.—We admit that.

(Testimony of Ed. Carlson.)

Q. Now, you say that the line parted because the vessel sheered, one going one way and the other going the other way?

A. Well, the wind was aft; that makes a vessel sheer.

Q. And she sheered more because her rudder was gone?

A. Well, most assuredly; if the rudder had been there she would not have sheered at all.

Q. And the sheer was due to the absence of the rudder? A. Yes, sir.

Q. And that was why you say you expected it to part after it was fastened the second time?

A. Not exactly that, but the steamer was on one bow, and then went right across on the other bow.

Q. You say you were expecting it to break at any time? A. Yes, sir.

Q. Why was that—you did not expect it to break the way she was towing; it did not take an hour to cross the bows, did it?

A. Well, it did not take an hour to cross the bow, but if you are expecting a thing in a short while, you might as well stand around and be ready.

Q. You expected it to break because of the sheering of this vessel? A. Yes, sir.

Q. That is the fact about it? A. Yes, sir.

Q. Now, why did it take you so long to get your hawser on board? You said it took you from half-past twelve until about four o'clock?

A. Well, it was slow work.

Q. Why slow?

(Testimony of Ed. Carlson.)

A. That is a heavy line, and then you haven't exactly got the gear to get a hawser in like you have on a steamer.

Q. You did not have steam up?

A. Yes, we had steam up.

Q. Why did it take you so long to get the hawser in?

A. They started in by hand and we did not have full steam up.

Q. Took you some time to get steam up?

A. Half an hour or so.

Q. After you got steam up there was no trouble, was there?

A. We got it to the winch and hove it in.

Q. How long did it take you after you got it to the winch?

A. I don't know, I could not tell you.

Q. The reason you were so long was because you did not have steam up—that is the truth of the matter, is it not?

A. Well, it took us about half an hour to get steam from the time it parted and the boiler was warm before.

Q. The boiler was warm? A. Yes, sir.

Q. Took you only half an hour to get up steam?

A. Yes, sir.

Q. That is all? A. Yes, sir.

Q. Then it took you three hours pulling in the hawser, did it? A. No, it did not.

Q. How long did it take you?

A. Oh, if it took us two hours from the time we started first, that is about all.

(Testimony of Ed. Carlson.)

Q. You say it was half-past twelve when she broke, didn't you? A. Yes.

Q. And you did not get it up there until 4?

A. The hawser was on board the steamer all right by four and made fast.

Q. How long did it take you to get the hawser in to your vessel? A. About a couple of hours.

Q. Took about an hour of that time to get up steam? A. Half an hour.

Q. You think you got up steam in half an hour?

A. Yes.

Q. Now, you say your headgear was pulled out?

A. Yes, sir.

Q. What caused that, mate?

A. Well, the hawser carried it away.

Q. The hawser carried it away?

A. Yes, that is the only thing that caused it.

Q. How did it do it? Tell me how. You see, I do not know as much about it as you do. I want you to tell me.

A. Well, the vessel sheered about and the hawser was across the bobstays and they were bound to carry away.

Q. Because of the sheer of the vessel, was it?

A. Yes, sir.

Q. A rough wind blowing all the time, was there not? A. No.

Q. From half-past 12 to 4? A. Yes.

Q. Now, when did you come into the straits around Cape Flattery?

(Testimony of Ed. Carlson.)

A. We drifted in there, we came into the straits on the night between the 11th—

Q. The night of the 11th.

A. Yes, in the evening or in the night of the 11th.

Q. What time in the night?

A. Well, four o'clock we were abreast of Neah Bay.

Q. You came in around Flattery about what time then?

A. From eight in the evening until four in the morning.

Q. That was on the morning of the 12th?

A. Yes, sir.

Q. What kind of weather did you have outside?

A. Outside of Cape Flattery?

Q. Yes, sir. A. That same day?

Q. Yes.

A. We had a heavy gale that same day.

Q. Rough weather out there, unusually rough, was it not? A. Yes, sir.

Q. And you got inside to Neah Bay about 4 o'clock in the morning?

A. Arrived off Neah Bay about 4 o'clock in the morning.

Q. The wind was blowing hard then, was it?

A. No, it was not blowing hard.

Q. Did not blow very hard during the 12th, did it?

A. No, not at all.

Q. Light east wind, was it?

A. Well, it was a moderate fresh breeze during the day, not anyways hard at all.

(Testimony of Ed. Carlson.)

Q. Do you know whether you heard the captain of the "Nelson" say that he would not agree to make any agreement as to what he should charge for assisting you? A. Yes.

Q. You heard the captain of the "Holden" say back to the captain of the "Nelson" that he would not take his line unless he agreed to treat it as towage and not as salvage? A. Yes, sir.

Q. Did you hear the captain of the "Nelson" respond to that? A. Yes, sir.

Q. He said, "All right, I will tow you"?

Q. "All right, I will tow you."

A. Yes.

Q. How many men did you have in your vessel?

A. Twelve men all told.

Q. Any of them on deck besides you and the captain?

A. Yes, sir, they were all hands on deck.

Q. All hands on deck that night?

A. Yes, sir.

Q. You had one jury-rudder out, had you?

A. Yes, sir.

Q. Have any other one?

A. Not at the time, no.

Q. Did you have any more out before that?

A. Yes, we had another jury-rudder out before that.

Q. That had been taken in, had it?

A. Yes, sir.

Q. So that there was only one jury-rudder out at that time? A. That is all.

(Testimony of Ed. Carlson.)

Q. The "Nelson" towed the vessel up and she was constantly sheering backwards and forwards?

A. Yes, sir.

Q. And that was due to the absence of the rudder, was it not? A. Yes, sir.

Q. And that twisting on the hawser caused you to think that it would break—that is why you expected it to break?

A. Well, the way it looked to me, that second time, he was first on one bow and then on the other, and I thought to myself it might break pretty soon again.

Q. What sort of a hawser was it—a new one?

A. It was a good line.

Q. It looked like a good line?

A. Yes, looked like a good line to me.

Q. You did not see anything that indicated that it was not a good line, did you? A. No.

Q. Your conclusion is that it was a good line?

A. Yes, sir.

Q. You think it broke because of the sheering of the vessel, is that right? A. Yes, sir.

Q. Now, you hauled in the hawser the second time, didn't you? A. No.

Q. Did not you take it in the second time after it broke?

A. No, it was the steamer hauled it in the second time. It broke on board our ship the second time, on our chock.

(Testimony of Ed. Carlson.)

Redirect Examination.

Mr. KING.—Now, the first time the hawser broke, when you commenced hauling it in, was it entangled in any way?

A. No, I don't think it was.

Q. It was not. When did she commence to sheer back and forth like you have testified?

A. Well, she was doing that at 12 o'clock when I was coming on deck.

Q. Was she doing that when you first started out?

A. No, sir.

Q. What was the reason?

A. The reason was because the wind was ahead when we started towing, and the wind was aft at the time I came on deck at 12 o'clock.

Q. You say you heard the captain of the "Holden" say to the captain of the "Nelson" to tow you to the American shore? A. Yes, sir.

Q. If he had done so would she have sheered so much as if he kept her before the wind?

A. No, she would not sheer so much if he towed her to the American shore.

Q. Towing to the American shore would not have been before the wind, would it?

A. No, it would not.

(Testimony of witness closed.)

[**Testimony of Captain Laury, for Claimant.**]

Captain *LAURY*, recalled, testified as follows:

Mr. KING.—When you were drifting here three miles from the Vancouver shore, what time in the morning was it?

(Testimony of Captain Laury.)

A. The last time about 5 o'clock in the morning, somewhere around five o'clock—six, maybe; I did not look at the time.

Q. How was the wind?

A. The wind was southwest.

Q. How hard was it blowing?

A. That is when we got the line aboard the second time?

Q. Yes. A. It had moderated then.

Q. It had? A. Yes.

Q. You heard the blow when the line parted?

A. Yes.

Q. How hard was it blowing at that time?

A. It was blowing heavy squalls.

Q. About what time of day was that?

A. That was in the morning when it parted the second time.

Q. That is when it parted the second time?

A. Yes, when it parted the second time it must have been around four o'clock.

Q. The wind was blowing hard then?

A. It was blowing in squalls.

Q. How was the wind between five and six?

A. Southwest, moderating then.

Q. How much did it moderate?

A. Oh, I don't know, a good deal; moderated enough so that if I had been sailing I could have carried all the sails.

(Testimony of witness closed.)

Hearing adjourned, to be resumed by agreement.

(Testimony of George Haley.)

Seattle, Washington, November 12, 1908.

Continuation of proceedings pursuant to agreement.

Present: Mr. CLISE and Mr. KING, for the Claimant.

Mr. KERR, for the Libellant.

Mr. KERR.—We rest, except as to rebuttal.

[Testimony of George Haley, for Claimant.]

GEORGE HALEY, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. CLISE.) What is your business or profession? A. Master mariner.

Q. How long have you been such?

A. Since I was 19 years old; I am 46 this coming fall.

Q. About 25 years? A. 25 or 26 years.

Q. Where have you acted in that capacity?

A. On the Atlantic Ocean.

Q. In what portions of the Atlantic?

A. All over it; as far south as Sydney, Cape Breton north, and Europe and back.

Q. How long have you been on the Pacific?

A. Came out in 1897. Four years I was on the Yukon, and have only been about four years on the Pacific.

Q. What portion of the Pacific have you visited?

A. Coastwise and over to the Orient, to Manila, and down to South America, the Hawaiian Islands.

Q. During your experience as master mariner what class of anchors have you had on your various vessels? A. All kinds that ever was made.

(Testimony of George Haley.)

Q. Are you familiar with the anchors on the schooner "Holden"?

A. Yes, she has got the same as the "Clise," Balt anchors. I never seen them; I have them on the "Clise."

Q. What kind of an anchor is that?

A. That is an anchor with no stock in it, just two flukes, called the pen anchor, but the proper name is Baltd anchor.

Q. Now, have you had any experience with the use of this anchor in severe weather?

A. Yes, in gales.

Q. Where?

A. Once in the Philippines in a typhoon, and last fall in Tampico, lying in an open roadstead.

Q. When did you have this experience at Manila?

A. Two years ago.

Q. Do you know what the force of the wind was?

A. They say it blew over 110 miles an hour; I cannot say myself.

Q. Just relate your experience in Manila harbor, with this anchor.

A. Well, we started to go into quarantine station, and my vessel missailed and I had to go ashore, and a typhoon came up and I let go anchor in forty-five fathoms and it was rolling the rails under and put the ship on her beam ends. We did not know that it was really going to be a typhoon. I let go forty-five fathoms of chain, and I tried to get the anchor up to try to get under the lee of a point, but the wind was so hard we could not do it; after the

(Testimony of George Haley.)

typhoon was done we hove it up short and broke it out; we had a hard job.

Q. Were you exposed to the full force of the wind?

A. It came right in from the ocean.

Q. What, in your opinion, was the force of the wind?

A. Well, I should think it blew 100 miles an hour, at the least calculation.

Q. Have you had any experience with the holding powers of these anchors here in Puget Sound?

A. Well, down at Port Townsend here the other day, I think about the 12th of the month, it blew quite a heavy southeast gale there, and a German ship went right by us.

Q. What kind of anchors did the German ship have?

A. The old-fashioned stock anchor.

Q. In your experience as a master mariner for this length of time, what, in your opinion, is the best class of anchors that a ship can carry of the character of the "Holden"?

A. These Baltd anchors. If I was building a vessel to-morrow of any size I would put them on it.

Cross-examination.

Q. (Mr. KERR.) You say, Captain, you think the wind blew over in Manila Bay 100 miles an hour?

A. They claimed 110.

Q. I did not ask you what they claimed?

A. I think so; yes, sir.

(Testimony of George Haley.)

Q. And what depth of water were you moored in?

A. Seven fathoms.

Q. Seven fathoms of water and 45 fathoms of chain you would have been in perfect safety?

A. Yes, sir.

Q. No question about it?

A. No question about it.

Q. Would not have made any difference what kind of holding ground you had?

A. It does, sometimes; of course sometimes the holding ground is soft sand and sand would not hold as good as in mud or hard rock.

Q. Will the Baltd anchors hold as well on rocky bottoms as the old anchors?

A. Yes, any kind of bottom, in my opinion.

Q. And how severe was this gale over at Port Townsend?

A. I do not think it blew, to my estimate, over forty or forty-five miles.

Q. Forty-five miles an hour?

A. We have no way of gauging the wind. We only judge.

Q. What day of October was that?

A. About the 12th.

Q. What time in the day or night was it?

A. Two o'clock in the afternoon; the gale came up and moderated down at sundown.

Q. And you think the wind blew forty-five miles an hour about two o'clock on the 12th of October at Port Townsend?

A. Well, I would not be positive about that date; but you can easily find out by telephoning down to

(Testimony of George Haley.)

Captain Morrison; they were all watching the German ship, she dragged very close by my vessel at the time.

Q. What weight of anchors did you have out at Manila where you state there was a 100 mile gale?

A. Three thousand and some odd pounds, I think that was.

Q. How large a ship?

A. Seven hundred tons.

Q. Loaded? A. Light.

Redirect Examination.

Q. (Mr. CLISE.) The way you fix the date on which this wind blew at Port Townsend, I understand to be by the day on which the German ship drifted past you?

A. Yes. I won't be positive of that date; I do not remember the dates.

Q. (Mr. KERR.) You have no instruments for measuring the velocity of the wind?

A. No, sir; just use our own judgment about it.

Q. What is the greatest force of wind in miles that you have ever experienced as a sea captain?

A. We went out in a gale of wind down on the coast that had blowed the weather gauge down at Point Arena, the schooner "J. W. Clise"; it registered 110 miles before the gauge was blown down. That is all I can tell you about it.

(Testimony of witness closed.)

[**Testimony of Captain Lauer, for Claimant.**]

Captain *LAUER*, recalled, testified on behalf of Claimant as follows:

Q. (Mr. KING.) In the testimony of James McCue, a witness for the libelant, he states that the last time the tow-line carried away, in a conversation between you and the captain of the "Nelson," the "Nelson's" captain said, "It was a terrible night last night, Captain," and that you said, "Yes, it was one of the worst nights I have ever seen." I will ask you if that conversation is correct, in your recollection.

A. No, it is not. As far as my recollection goes, he said it was a bad night and I said, "Yes, it was pretty tough." That is what I said.

Q. The testimony of the same witness, on cross-examination, the "Nelson's" captain asked you to hoist your jib. What answer did you make?

A. I said, "I cannot hoist it, my bobstays are carried away."

Q. Is that all you said?

A. That is all I said. But the reason I stated I did not want a long argument about this jib. I could have hoisted my staysail, but I knew how my vessel acted; it would not have done any good to hoist the jib at all, and the consequences would have been if the wind gathered a little headway and made matters worse. I did not want to have any argument and I said, "I cannot hoist it." I did not want to make any explanation.

(Testimony of Captain Lauer.)

Q. In the testimony of Alexander Lundgren, a witness for the libelant, on page 23, he states that he should not have thought that the "Holden" would have made any sternway with one sail aback and the other sail drawing? Were you in that condition prior to the "Nelson" overhauling you at Wyadda island? A. No.

Q. What position were you in?

A. Both sails aback; both the mizzen and the spanker were aback and gave her sternway.

Q. What was the condition of the ten inch hawser that was first passed to you?

A. It was a good hawser.

Q. Well, was it new or had it been used?

A. It had been used.

Q. In your opinion how long had it been used?

A. Well, it had been used for towing. You could see that, it was chafed some, you know, and you could see it had been used for towing. It looked like a good hawser, though. It was pretty hard to judge of a hawser, you know, because a hawser will stand a certain amount of strain and it will not show that it has got bad. You cannot tell, it may be straining the hawser very hard; it may have lost its strength without anybody being able to tell it.

Q. Now the witness McRae, for the libelant, has testified that that was a new hawser. In your opinion is that true, from what you saw of the hawser?

A. No, the hawser had been used before; you could see that.

Q. The witness McRae speaks about pulling the "Holden" around and said that he could do so if

(Testimony of Captain Lauer.)

he had plenty of room. Was there any other way he could have handled the "Holden" without pulling her around before the wind? A. Yes, sir.

Q. What way?

A. By pulling, by keeping up against the wind.

Q. Well, could he in the wind that was blowing, could he have kept here up against the wind?

A. He could; he done it several times.

Q. Even though he made no headway?

A. He did make headway.

Q. Suppose he did not make headway?

A. He could hold her.

Q. And held her until the wind abated?

A. Yes, sir.

Q. This same witness McRae testified that the position of the vessel at half-past five, when she parted the line, was probably two or three miles to the westward of Race Rocks, and not over three-quarters of a mile off the mainland of Vancouver island; is that correct as to the position of the vessel?

A. When she parted the line the second time?

Q. Yes, sir; was that the correct position of the vessel at that time?

A. When the line parted, no. According to my bearings, I have my bearings on this chart (exhibit 1), and according to this and the bearings I took during the night she ought to have been in the position marked E.

Q. I do not ask what position you ought to have been in, but what position were you in, to your knowledge?

(Testimony of Captain Lauer.)

A. To my knowledge in the position E.

Q. How far is that from the Vancouver shore?

A. From the Vancouver shore it is about three miles.

Q. Were you taking bearings during the night?

A. Taking bearings right along.

Q. Could you see to take bearings?

A. Yes, I could see Race Rocks and I could see the lights from Port Angeles.

Q. At 5 o'clock in the morning?

A. Yes, sir.

Q. And previous to that time?

A. Yes, sir.

Q. Then the nearest you were to the Vancouver shore at 5 o'clock in the morning was how far?

A. Five o'clock in the morning, that is when the line parted, about three miles.

Q. Did you get any nearer?

A. Yes, I drifted nearer.

Q. How much nearer?

A. I drifted probably a mile and a half nearer.

Q. So that you were then how far?

A. The exact position on the line, as I took it from the bearings on the lights, we will say was about two miles off Race Rocks and two miles off Vancouver shore.

Q. Captain Ranselius, a witness for the libelant, testifies that at the time the tow-line parted the first time, between half-past twelve o'clock and one o'clock, that the "Holden" was shearing right over across the straits, the wind being southwest, and

(Testimony of Captain Lauer.)

that she was heading south, and was dragging the "Nelson" astern with her; that he could not manage the "Nelson"; that she would not steer and that before the hawser parted he had to turn the "Nelson" towards the Vancouver shore. Is that correct?

A. Well, I was not on deck at that time.

Q. Who was on deck at that time?

A. The mate.

Q. What wreckage was floating from the "Holden" at the time the "Nelson" picked you up off Waadda island? A. No wreckage.

Q. What spars?

A. The jury-rudder consisted of a spar about thirty feet long, which extended aft about forty feet in all together. We put it about ten feet astern of the vessel and there was four wires attached to it, two wires on the forepart of it to hold her on to the vessel and two wires on the aft part of it to steer her by.

Q. Where did these wires lead to?

A. Lead right alongside the vessel, aboard ship, inside the deck.

Q. Under this piece they speak of as being across the taffrail?

A. No, outside of that, lying just alongside of the vessel.

Q. What was this piece of timber for that they speak about being across the taffrail?

A. Of course that was used as an outrigger for the steering gear; but outside the Cape we had this bad weather and a big high sea; one end broke off

(Testimony of Captain Lauer.)

and the other one had to be cut off on account of the high sea.

Q. Then it was performing no service as steering gear when you were off Waadda island?

A. No, sir.

Q. How far did it project outside from the side of the vessel?

A. It was flush on one side and projected about three feet on the other.

Q. How was the wind at the time the "Nelson" first came up and you were lying east of Waadda island?

A. About east-northeast.

Q. And then was this spar that you speak of floating alongside the vessel?

A. It was just hanging astern.

Q. What difficulty or danger, if any, did it make in regard to the vessel that was to heave you a line, as to her approach?

A. There would be no danger at all. In case of the "Nelson" it would never have been any danger, because she could not come on the port side; she always came on the starboard side. This was on the port side.

Q. It was lashed?

A. It was hanging on the port side, fastened to the wires that had been put over to the port side, and it was hanging there on the port side, hanging astern on the port side.

Q. What was your experience that night while you were on deck or the next morning, with regard to points from which you could take bearings, points that were visible?

(Testimony of Captain Lauer.)

A. They were visible at all times except between Waadda island and Race Rocks I was not on deck; I was not on deck until we got to Race Rocks—until we got abreast of Crescent bay.

Q. What time in the morning was that?

A. About half-past twelve.

Q. When you got on deck how was the night with regard to lights and bearings?

A. I could see Race Rock and I could see Crescent Point.

Q. That is you could see the lights.

A. I did not notice the lights; I saw the land. I always take that?

Q. Could you see the general trend of the Vancouver shore?

A. Yes, I could see land on both sides.

Q. On the American shore too? A. Yes.

Q. And that was how you took these bearings marked on exhibit 1?

A. Yes. They were taken at that time.

Q. Now, Captain, in the testimony of the various witnesses for the libelant, there has been statements to the effect that when the "Nelson" sighted you and first spoke to you, the officer on board of the "Nelson," the captain, asked you if you wanted any assistance. I will ask you if these statements or any of them are correct?

A. No, they are not correct. The word "Assistance" was never used.

Q. What was the language used, to the best of your recollection?

(Testimony of Captain Lauer.)

A. I am absolutely sure that the captain asked me, "What do you want?"

Q. I will also ask you if the signals you then had flying indicated that you were in need of assistance?

A. One signal said, "In distress," forward, and the aft one said, "Can you give us any assistance in the way of."

Q. Leaving a blank?

A. Leaving a blank, yes.

Q. As to the sort of assistance you wanted?

A. Yes.

Q. Now, in the testimony of the witnesses for the libelant there has been more or less varying testimony as to the force and direction of the wind about four o'clock in the afternoon, when you were lying east of Waaddah island and the "Nelson" first spoke you. Are you certain as to the force and direction of the wind, at that time? A. Yes, sir.

Q. What was the force and direction of the wind?

A. The wind right underneath Waaddah island—

Q. Where you lay?

A. Where I laid, the wind was very light; probably from eight to ten miles an hour, no more.

Q. What was it in the straits at the time, do you think?

A. It was a good fresh breeze in the straits, say twenty miles, hardly that. The closer you came underneath the shore the lighter the wind got.

Q. Would you say that the wind at any time there was thirty to forty miles an hour.

(Testimony of Captain Lauer.)

A. No, at no time.

Q. What was the direction?

A. The general direction was about east-north-east. The wind might vary, shift a point or two at one time or another, as it generally does.

Q. Was there anything southerly in it.

A. No, sir, nothing southerly; it was always from the north of east.

Q. Was there anything said by anybody aboard the "Nelson" at that time about your anchoring?

A. No, nobody said anything about anchoring.

Q. No suggestion made that you should anchor?

A. No, not to me.

Q. To anybody, in your hearing.

A. No suggestion made; that suggestion was made by myself.

Q. What did you say?

A. I asked the captain if I should drop my anchor while he got the line ready and he told me no.

Q. What sort of holding ground did you have there? A. Good holding ground.

Q. What kind of good holding ground.

A. It is sandy at different points right along there. Sand and mud and good holding ground right along on the American shore except in a couple of places lying between Pillar Point and Slip Point it is rocky; or again at Crescent Bay, it is bad holding ground.

Q. I speak about Waaddah island, east of Waaddah island.

(Testimony of Captain Lauer.)

A. Near to Waaddah island it is good holding ground.

Q. What do you mean by good?

A. That the anchor will hold at any time.

Q. When the hawser broke the first time, where did it break, that is did it break on the "Holden" or the "Nelson"?

A. Broke aboard the "Nelson."

Q. And had to be hauled in by the "Holden"?

A. Yes, sir.

Q. Was there anything to keep you from hauling in or getting ready to haul in?

A. Yes, sir, the chains of the bobstays tangled the hawser.

Q. Where did they come from?

A. They came from underneath the jibboom.

Q. How did they get foul of the hawser?

A. The hawser broke the chains, and the force of breaking the chains tangled and swung the chains around the hawser.

Q. Then this gear was foul of the hawser when you started to get it in?

A. Yes, it had to be cleared first.

Q. What was the condition of the donkey at the time with regard to steam?

A. The donkey was hot—there was probably ten or twenty pounds of steam on.

Q. This is before the hawser broke?

A. At the time the hawser broke.

Q. What did you do with the donkey?

(Testimony of Captain Lauer.)

A. Got up steam right away; started the fire right away.

Q. What did you do about clearing this gear that was foul of the hawser?

A. I took a piece of rope and made a bowlin and went down and cleared it.

Q. Down where?

A. From the bow of the "Holden."

Q. Did you do that yourself?

A. I went down myself.

Q. On which side—lee or weather side?

A. On the weather side, the starboard side.

Q. How far down did you go?

A. Yes, it was the lee side at that time.

Q. How far down did you go, how close to the water? A. Probably ten feet.

Q. What is her freeboard there?

A. It would be about 18 feet up.

Q. You were about eight feet from the water?

A. Yes, sir.

Q. What sort of sea was running?

A. Well, the sea at that time was just beginning to get a little choppy.

Q. Did you get wet, by the way? A. No.

Q. There was not enough sea at that time. Then when you came up what did you do?

A. By the time I got up, got the chains all clear, the steam was up and we hove in the line.

Q. Now, referring to exhibit 1, I understand that D is where you got the hawser aboard after it parted the first time? A. Yes, sir.

(Testimony of Captain Lauer.)

Q. What was the direction of the wind at that time? A. About southwest.

Q. And its force?

A. Its force was varying. It was squally.

Q. What would you say as the maximum?

A. The maximum was fifty miles; that was about as much as she blew during that time.

Q. Well, now, what course did the captain of the "Nelson" take with the vessel after he got made fast, after the hawser broke the first time.

A. He kept the vessel on the starboard tack close to the American shore.

Q. How did she behave on that? A. Fine.

Q. How long did he keep her on that tack?

A. About 15 minutes.

Q. Then what did he do?

A. He hauled the vessel over on the other side of the wind probably to turn around.

Q. Now, indicate on that piece of paper from point D the course?

A. At the mark D the wind was southwest.

Q. Mark the ship and mark the "Nelson."

A. The vessel was heading south southeast, that is the "Holden."

Q. A indicates the "Holden" and B indicates the "Nelson," is that right? A. Yes, sir.

Q. Go ahead.

A. Now, she went about ten or fifteen minutes, and then the captain hauled away toward the wind, the wind was in this direction.

Q. Indicate how the "Nelson" went first, about the position of the "Nelson" when he hauled her.

(Testimony of Captain Læuer.)

A. The position would be like this. The "Nelson" swung around this way.

Q. Where was the position of the "Nelson" then?

A. The position of the Nelson was here.

Q. Where was the "Holden"?

A. Here.

Q. What effect did that have?

A. It affected her this way, as soon as we got on the port tack the vessel would swing off six points on the wind. The vessel would always lay about six or seven points of the wind. As soon as she had the wind on the port tack she would swing right around.

Q. Show the position she would swing in?

(Witness does so.)

Q. That is the position she would swing in. What effect would that have?

A. It would bring the "Nelson" on the lee.

Q. Then what did the "Nelson" do?

A. The "Nelson" had slack line, that is crossing her bow full speed like this.

Q. Then what happened?

A. He swung around then probably this way, and by the time he got here with the line, going full speed across the bow, it would break.

Q. Mark the position of the "Nelson." Mark the different positions of the vessels 1, 2 and 3.

A. At the position three, that is where the line broke.

Q. Now, what do you say was the cause of the line breaking?

A. The cause of it was by the "Nelson" going across the "Holden's" bow full speed, swinging right around.

(Testimony of Captain Lauer.)

Q. Suppose you had kept on the source indicated by position 1 in this Exhibit 2, how would the vessel have towed?

A. The vessel would have towed all right.

Q. Where would you ultimately have got to, I refer to Respondent's Exhibit 1?

A. About Freshwater bay, just past Port Angeles bay we would have got to.

Q. Do you know of any reason why the captain of the "Nelson" changed from position 1 to position 2 in Exhibit 2? A. No.

Q. Did you have any conversation with him as to the course to keep? A. Yes, sir.

Q. What did you say?

A. I told him, after the first line parted, I told him, "Let's keep over to the American shore in smooth water."

Q. Referring to Exhibit 2, which of these positions were you in when you had that conversation?

A. I was not in this position yet; we had no hawser on when I told him this.

Q. It was before you got into position 1?

A. Yes, sir.

Q. Did you expect him to keep you going in position No. 1? A. Yes, sir.

Q. In your opinion, if he had done so, would you have gotten over to the American shore in safety?

A. Yes, sir.

Mr. KING.—I offer this diagram referred to by the witness in evidence.

(Testimony of Captain Lauer.)

(Paper marked Claimant's Exhibit 2, filed and returned herewith.)

Q. Do you know whether the "Nelson" had any passengers on board that trip?

A. I tried to find out and I was told—

Q. Never mind what you were told. You do not know of your own knowledge whether she did or not.

A. No, I do not.

Cross-examination.

Q. (Mr. KERR.) Referring to Exhibit 2 indicating the several positions of these vessels, you have indicated here that the wind was in the direction of this arrow mark, southwest?

A. Yes, sir.

Q. So that when the vessels were in position 1, the wind was veering to the southwest as indicated here?

A. Yes, sir.

Q. Now, when the vessel got around to position 2, they were just about headed into the wind.

A. No, a little past the wind.

Q. Having got a little past the wind, the wind sheered and the "Holden" that was rudderless, fell off six or seven points?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. And the captain of the "Nelson" then maneuvered his vessel, as you claim, improperly.

A. Yes, sir.

Q. How much sheer did this same wind give this vessel when she was in position 1, where the whole force of the wind was against the vessel?

(Testimony of Captain Lauer.)

A. No sheer at all; made probably a point; no more than that.

Q. The full force of the wind striking the rudderless "Holden" did not sheer her more than one point, but when going into a head wind she sheered six or seven points? A. Yes, sir.

Q. How do you account for that?

A. Well, the vessel has done it all the time, ever since we were without a rudder, all the time.

Q. Did you tell the captain of the "Nelson" that that was true?

A. I told him to keep me in toward the American shore.

Q. Did you tell the captain of the "Nelson" that ever since you had met with this mishap, that your vessel had that tendency to sheer off to the left three or four points when you got up into the wind six or seven points? A. Any vessel will do that.

Q. I ask you if you told him that? A. No.

Q. You did not tell him anything about that?

A. No.

Q. He did not know anything about it being a peculiarity of the "Holden"?

A. It is not a peculiarity of the "Holden."

Q. It is a peculiarity of every vessel?

A. Yes, sir.

Q. The "Holden" had a very heavy list, didn't she? A. Not a very heavy.

Q. How much? A. Nine degrees.

Q. Nine degrees of list? A. Yes, sir.

Q. What direction?

(Testimony of Captain Lauer.)

A. Toward the port side.

Q. Where would that list be when she was headed up here into the wind?

A. It would be over this way. (Showing.)

Q. She would have much less exposed, less of her hull, to the force of the wind than she did when the wind was when she was in position 1?

A. No, the deckload is so high—was a certain height.

Q. I say when she was in position 1 she was listed to port? A. Yes.

Q. And she offered a greater part of her hull to the force of the wind in position 1 than when she was in position 2, did she not, on account of the list?

A. The hull was the same height above the sea all the time.

Q. She had a list to port so that there was a great part of her hull exposed up to the deckload, when in position 1 to the force of the wind than in position 2? A. Yes, sir.

Q. Notwithstanding that she sheered more when headed into the wind with a less exposure of hull to the force of the wind than she did in position 1?

A. No, she sheered the same way. No matter which side the wind was she would go off; she would go off six or seven points off the wind.

Q. Now, Captain, as a matter of fact you had no rudder? A. No.

Q. You had no way of steering the "Holden" at all? A. No.

(Testimony of Captain Lauer.)

Q. You made this diagram and your theory is that the captain of the "Nelson" did not properly maneuver his vessel, is that it? A. Yes, sir.

Q. That is your theory about it?

A. Yes, sir.

Q. Have you handled steam tugs yourself?

A. No.

Q. Now, up to the time the hawser broke the first time you had been towed from B at Waaddah island down to the point marked on this chart, C?

A. Yes.

Q. That night was stormy, was it not?

A. Yes, sir.

Q. Rained and snowed during the night?

A. Well—

Q. It did, didn't it?

A. After I came on deck—not after I came on deck after half-past twelve it did not snow any.

Q. You did not see it snow any at all?

A. No.

Q. And you were on deck from that time until morning? A. Yes, sir.

Q. And cloudy, was it not?

A. I could not tell exactly.

Q. Was it clear?

A. The sky was not clear but the land could be seen here.

Q. Was it overcast? A. Yes.

Q. Any spray flying?

A. Not that I noticed.

Q. Did not notice any spray flying?

(Testimony of Captain Lauer.)

A. No.

Q. You say you could see the shore?

A. Yes, sir.

Q. Plainly? A. Yes, sir.

Q. If you could see it of course the officers of the "Nelson" could see it.

A. Yes, sir, ought to.

Q. Where was it the hawser broke the second time? A. At E.

Q. And you were picked up at F?

A. Yes, sir.

Q. And at that time how far were you off Race Rocks? A. A mile and a half.

Q. When the hawser broke you think you were about three miles? A. Yes, sir.

Q. You could see Race Rocks? Or could you see the light?

A. I could see the light; I could not see Race Rock.

Q. You could not see Race Rock? A. No.

Q. But you could see the American shore on the other side?

A. No, I could not see the American shore but I could see the light from the Ediz Hook.

Q. What it was you saw was the Race Rock light and the Ediz Hook light? A. Yes, sir.

Q. You figured that when you were about at position E? A. Yes, sir.

Q. When they picked you up you were about position F? A. Yes, sir.

Q. And you estimated that you were about a mile and a half off Race Rock at F?

(Testimony of Captain Lauer.)

A. Yes, sir.

Q. And how many miles off Ediz Hook?

A. Probably ten or twelve.

Q. What did you chart that night, outside of this chart, when making the observation?

A. I went right down in the cabin. After I got my hawser aboard, I took my bearings so that I knew exactly where we were.

Q. You took bearings?

A. Yes, by the compass.

Q. What bearings did you take by the compass?

A. You see the old lines on here, I made them from the lights that night.

Q. You made these lines that night?

A. Yes, sir.

Q. You did not put these figures E F on that night? A. No.

Q. That was put on when the testimony was taken? A. Yes, sir.

Q. These lead pencil lines are the bearings?

A. Yes, sir.

Q. But when you came to give testimony here you used the bearings you took that night?

A. I base my testimony—

Q. You put these red circles on these letters?

A. Yes, sir.

Q. But you did not calculate, did you, that night, captain, that the point E was the point where the hawser parted and the point F was the point where you were when you were picked up?

A. Yes, I took the bearing right away, as soon as the hawser broke. I was not where the Hawser

(Testimony of Captain Lauer.)

broke; the hawser was broke aboard forward, and I went right aft and took the bearings so that I knew.

Q. Did you make this point E at that time?

A. No, but I made these lines at that time.

Q. You made these lead pencil lines that are now on here at that time? A. Yes, sir.

Q. Did you locate these circles?

A. By my bearings.

Q. E and F when you gave your testimony?

A. Yes, sir.

Q. Now, it is a fact, is it not, captain, that after you got down in that vicinity where the hawser broke the first time, and where it broke the second time, there was a very heavy wind blowing.

A. No, squalls, very heavy in squalls.

Q. And it is a fact that the "Holden" slued back and forth on the hawser?

A. At certain times.

Q. At certain times?

A. Whenever the steamer would try to get off the wind.

Q. Well, it is a fact that you could not steer her at all and that these sudden gusts of wind caused her—

A. No, it is not the sudden gusts of wind.

Q. It was not the sudden gusts of wind?

A. No.

Q. Well, the idea is that when the captain got into position No. 1, in Exhibit 2, that if he had simply held that position he would have taken you somewhere? A. Yes, sir.

(Testimony of Captain Lauer.)

Q. And you do not know why he changed his course?

A. I do not know why. I might have an idea why.

Q. You do not know why he changed his course?

A. He did not tell me why.

Q. You were headed in then toward the American shore? A. Yes, sir.

Q. And for some reason unknown to you he changed his course toward position 2, headed into the wind? A. Yes, sir.

Q. Was the "Holden" slung back and forth on the hawser at that time? A. No.

Q. Do you remember whether she was or not.

A. Yes, I remember.

Q. What was she doing, was she following the vessel?

A. She was following the vessel as long as—

Q. In position 1 was she following the vessel all right?

A. Well, she was following—she headed up this way as the "Nelson" went over this way.

Q. I say when he was in position 1 was the "Holden" following the "Nelson" without any trouble at all? A. No.

Q. What was she doing?

A. The "Nelson" was getting over—

Q. I am not talking about the change, but up to that time, as long as he held in position 1 I ask you if the "Holden" was following the "Nelson."

A. Yes, sir.

(Testimony of Captain Lauer.)

Q. Following right along? A. Yes, sir.

Q. He was heading in toward the American shore? A. Yes.

Q. No sluing back and forth at all?

A. No.

Q. Keeping right along?

A. Keeping right along.

Q. You went down from Waddah Island to this position E. Did he follow down the middle of the straits?

A. I was not on deck to position C. I do not know.

Q. You do not know where he went?

A. No.

Q. Don't know how much trouble he had?

A. Except by my mate.

Q. I ask for your own knowledge. You do not know what difficulties he had until he got in position C, when you came on deck? A. No.

Q. And he followed from C to D along this dark line?

A. No, he drifted from C to D in four hours.

Q. When he picked you up at D on this chart, which way did he go?

A. He went about south-southeast.

Q. Just mark on there from D, mark the direction he took, if you please.

A. I could not tell you exactly which way.

Q. You took bearings?

A. After it broke I took bearings.

(Testimony of Captain Lauer.)

Q. Where did he head from D after he picked the hawser up, which direction did he go?

A. He went there seven points of the wind, probably about south or southeast by south; something like this.

Q. This position which you have indicated as position 1, was the position the vessel was in after he picked you up? A. Yes, sir.

Q. And I understood you, from Exhibit 2, that was the position he took immediately he picked you up the first time? A. Yes, sir.

Q. Indicate it on there. You have indicated it on Exhibit 2, indicate it on Exhibit 1.

A. I could not tell you exactly. She was going slowly and I could not tell you.

Q. Assuming that you are correct in exhibit 2, when you say the wind was from the southwest, indicate on exhibit 1, this chart, the position.

A. Probably she went about this way. (Showing.)

Q. She went from D to the circle O, which I have made in lead pencil? A. Yes, probably.

Q. How long did she pursue position 1?

A. About twenty minutes.

Q. Where did she reach, what point did she reach on this chart until he abandoned position 1?

A. Probably this position.

Q. The position indicated by the position shown by lead pencil circle? A. Yes.

Q. That would be a distance he made in twenty minutes?

(Testimony of Captain Lauer.)

A. Three-quarters of a mile or probably a mile.

Q. He was headed across, then, in the direction of Port Angeles? A. Yes, sir.

Q. Now, when he got to about this position, lead pencil circle, then you say he took position No. 2?

A. Took position No. 2.

Q. Indicate position 2 on this chart?

A. Position No. 2, right here at that circle.

Q. The line from D to the circle made by lead pencil as position 1? A. Yes.

Q. He was at the circle made by lead pencil when he took position 2?

A. Yes. It would be about the same place.

Q. Indicate that on there.

A. Right over the same place.

Q. Which direction did he steer his vessel in taking position 2?

A. Steered the vessel up to the wind, probably southwest.

Q. Steered the vessel around here toward the letter S, which I will mark with a lead pencil, in the direction of the letter S?

A. No, he did not go so far.

Q. I did not say he went so far, but he swung around into that direction, up into the wind.

A. Yes; not this distance, that is not correct.

Q. I know the distance is not correct. I am not trying to confuse you on distance. What does the circle near E represent?

(Testimony of Captain Lauer.)

A. When I took bearings after that hawser broke.

Q. What does that E represent?

A. E represents the bearing I took a few—right after that.

Q. It represents the place according to the original testimony where the hawser parted the second time, is not that right?

A. The first bearing I took after the hawser parted the second time.

Q. How did you go from lead pencil circle that I have indicated here down to E, where the hawser parted the second time, when he turned off into the letter S?

A. Probably the wind drifted her up, or probably might be merely veering, or might be out one or two degrees; this would only be a couple of thousand feet here.

Q. How did he get down that two thousand feet before the hawser parted, when you say he turned off in the opposite direction and assumed position 2?

A. This is his position 2.

Q. Position 2 on exhibit 2?

A. A position that was practically the same position as position No. 1; as soon as the vessel turned around the hawser parted.

Q. Then the hawser did not break at E; it broke at this point? A. Yes.

Q. Then your E is wrong.

(Testimony of Captain Lauer.)

A. No; the E is where I took the first bearing after the hawser broke.

Q. How long was that after the hawser broke?

A. Probably ten minutes.

Q. Do you know anything about how long it was?

A. Well, I went forward first and saw what was the matter, if anything else carried away, and got things ready to get the hawser aboard again, and then I went aft and took this bearing.

Q. Were you on deck when the hawser broke the first time? A. I was.

Q. That was at C?

A. No, not the first time.

Q. You were not there? A. No.

Q. You do not know what caused the hawser to break the first time? A. No.

Q. You found it fouled and you released it?

A. Yes, sir.

Q. Now, how long had you been operating sailing vessels in and out of the straits, captain?

A. As master?

Q. Yes. A. Eight years.

Q. How long had you been on the "Holden"?

A. Four years.

Q. How many trips in and out of the straits had you made? A. On the "Holden"?

Q. Yes. A. About nine trips.

Q. How many trips in and out of the straits had you made on sailing vessels altogether.

A. I do not know how many.

(Testimony of Captain Lauer.)

Q. About how many, captain?

A. Probably fifty.

Q. Did you ever anchor at Waaddah Island or in the vicinity of Waaddah Island? A. Yes, sir.

Q. When?

A. I could not tell you exactly the year. About 1898 or 1899, I think it was. I could tell you by looking up my papers.

Q. You anchored down there in 1898 or 1899?

A. Yes, not down here, but about three miles further up.

Q. You anchored about three miles above Waaddah Island in 1899?

A. I would not be certain, but I can give you the exact year if you want it.

Q. What vessel? A. The bark "Vidette."

Q. That is the one you testified to when you were on the stand? A. Yes, sir.

Q. And that is the only time you ever anchored in that vicinity?

A. I haven't inside here.

A. No, but under Waaddah Island?

A. Yes.

Q. What was the occasion of your anchoring there? A. Heavy southerly gale.

Q. You went under a lee shore? A. Yes.

Q. And you never anchored nearer than about three miles of the position you were in when he picked you up? A. Yes, sir.

Q. That is the fact?

(Testimony of Captain Lauer.)

A. Yes, that is except inside of Neah Bay.

Q. I am not talking about Neah Bay. I am talking about outside and above Waaddah Island. You never made any soundings there, have you?

A. When I came in I made soundings.

Q. Coming in with this vessel?

A. Yes, sir.

Q. Did you make any record of your soundings?

A. I think they must be on the log. This is forty fathoms.

Q. Where is the log, captain? What kind of a lead did you use—an ordinary lead?

A. Ordinary lead.

Q. You simply sounded and got the depth?

A. Yes, sir.

Q. And your testimony with regard to holding ground there is based upon the fact that you had actually anchored here once three miles below this position?

A. Yes, sir.

Q. And there you found holding-ground sufficient at least the wind blowing off a lee shore.

A. Yes, sir.

Q. It is not usual for vessels to anchor along that shore above Waaddah Island, is it?

A. It is not usual, because you generally can get in.

Q. You never would have anchored there in the world if you could have got in—if you could have gotten into Neah Bay, you mean?

(Testimony of Captain Lauer.)

A. Sure, instead of going to anchor here I would have gone to Neah Bay.

Q. What is the character of shore along here?

A. The shore line or land?

Q. The shore itself; is it rocky or sandy?

A. Well, it is sandy in places and rocky in places. It is a broken shore and runs right along.

Q. Does your Pilot Guide give any information as to the shore? Have you a Pilot Guide?

A. Yes.

Q. Have you got it here? A. No.

Q. Would it give you any information as to the holding-ground in there above Waaddah Island?

A. No, I do not think it gave any information. It gives information that a vessel could anchor right along anywhere.

Q. I ask you if you had it and if it gave any information. A. No.

Redirect Examination.

Q. (Mr. KING.) You say you sounded as you came in? A. Yes, sir.

Q. By Waaddah Island?

A. By Waaddah Island.

Q. On that day, that afternoon?

A. Yes, sir.

Q. What water did you get?

A. Forty fathoms.

Q. What did you sound with?

A. Lead line.

(Testimony of Captain Lauer.)

Q. Was it primed?

A. No, it was not primed.

Q. (Mr. KERR.) What were these two flags you had up? A. Forward?

Q. Tell what flags they were. You had one that was a signal of distress, what flag was that?

A. It was a square piece of canvas and a black ball underneath.

Q. Now what was the one aft?

A. The aft one meant—

Q. I did not ask you what it meant. I ask you what it was. What flag did you have up aft?

A. It was a letter "C" and "N."

Q. You had up a flag with the letters "C" and "N" on? A. Yes, sir.

Q. When did you take these flags down?

A. I took one down after the "Nelson" was in tow.

Q. That night or the next day?

A. No, took it down right away.

Q. Describe the flag you had aft.

A. I looked at my book.

Q. I ask you to describe the flag that you had up aft. A. The letter "C" and the letter "N."

Q. Were these letters on the flag itself?

A. No.

Q. Describe the flag itself.

A. It was a different colored cloth.

Q. What were the colors?

(Testimony of Captain Lauer.)

A. I cannot remember now.

Q. Don't you remember what colors were on the flag?
A. They can be taken out of the book.

Q. I ask you to describe the flags as to their colors.

A. I do not remember, but I know it had "C" and "N."

Q. (Mr. KING.) Counsel prevented you from telling what that first signal meant. You can tell now.
A. "I want immediate assistance."

Q. That was a piece of white canvas with a black ball underneath?
A. Yes, sir.

Q. And do you have special flags representing the "C" and "N"?
A. Yes, sir.

Q. You do not recollect what these particular square flags are? The aft signal was a certain series of flags representing the letters "C" and "N"?
A. Yes, sir.

Q. Now, I ask you where you got these flags?

A. Out of the Code book.

Q. Does the Code book give the flags indicating certain letters?

Mr. KERR.—I object as incompetent.

A. Yes, sir.

Q. These are the flags you put up?

A. Yes, sir.

Q. Referring to exhibit 2, you have indicated there position 1 and position 2. I ask you to state whether or not there was the difference between, as shown on that exhibit, between the positions of the

(Testimony of Captain Lauer.)

vessel in the water when they were in these two positions or not.

A. They were probably a difference in position of a thousand feet.

Q. Between position 1 and position 2?

A. Yes. Probably two thousand feet, somewhere along there.

Q. Now, the signal on your foremast—was it on the foremast? A. Yes, sir.

Q. The signal consisting of a square of white canvas and blackball underneath?

A. Yes, sir.

Q. In your direct testimony you testified that that meant I am in distress. You just testified that it meant I am in want of assistance. Now, which is right?

A. I could not tell you exactly without looking at the books. I took it out of the Code book and put them out. The United States Code book.

Q. Then your intention in putting them up was that they should convey to anyone what they stand for in the Code book? A. Yes, sir.

Q. (Mr. KERR.) Let me ask you, Captain, where were you when you put up these flags?

A. Over at Sombrero point. It was earlier. It was somewhere off Waaddah island. I could see when I put them up, I could see the light house at Waaddah island, or whatever point it is here where the light station is. I could see that by daylight.

Q. When you realized that you were drifting in on that shore?

(Testimony of Captain Lauer.)

A. I was not drifting in toward that land.

Q. When you realized that you were drifting in the position B where you were picked up, you put up these flags? A. No.

Q. What did you put them up for?

A. In the morning of the 12th at daylight.

Q. Did you make a record in the log-book of the place these flags were put up?

A. I could not tell you from memory.

Q. Do you usually, when you put up signals of distress or call for help, make any note of it in your log-book?

A. I do not think it was put in the log. It may be, I cannot remember now. It is so long ago.

Q. Well, how far off Waaddah island were you when you put these flags up?

A. Probably two or three miles.

Q. And you drifted about from morning until in the evening when you were picked up?

A. No. When I put them up I had a breeze, and I was sailing.

Q. You kept them up all day?

A. Kept them up all day.

Q. And you were then at a point two or three miles off Waaddah island when you put them up in the morning?

A. When I put the forward one up, because I had another one aft, I did that later on.

Q. When you put up the flag of distress or wanting assistance, you put it up in the morning, when you were two or three miles off Waaddah island?

(Testimony of Captain Lauer.)

A. Yes, sir.

Q. Now, you drifted about in the straits until five o'clock in the afternoon? A. No.

Q. What did you do? A. I sailed.

Q. Which direction did you sail?

A. I sailed in the direction of A.

Q. In the morning you were two or three miles off Waaddah island, and you put up this signal of distress and you claim you sailed all day and gotten back to the point B when you were picked up, is that right? A. Yes, sir.

Q. And in doing that you got from here—over here to this, point A opposite Sombrero point marked A with red ink?

A. Yes, sir, 10 o'clock in the morning.

Q. And then from ten o'clock in the morning until five you got back to point B?

A. I sailed back to the point B.

Q. And you kept this signal flying all the time, this identical signal?

A. The forward signal.

Q. When did you put up the aft signal?

A. I put the aft signal up at the same time as I put up the forward signal but a different signal.

Q. When did you put up the one that was up when the "Nelson" came to your relief?

A. About ten o'clock in the morning.

Q. You put it up over at A opposite Sombrero point? A. Yes.

Q. You kept that flag from 10 o'clock until you were picked up? A. Yes, sir.

(Testimony of Captain Lauer.)

Q. And you simply sailed into the straits from Cape Flattery and over to this point and back nearly in the same position you occupied in the morning?

A. Yes, sir, sailed back again.

Q. (Mr. KING.) Where were you on the morning of the 12th? A. At what time?

Q. Nine o'clock.

A. Somewheres in there, sailing over toward the Vancouver shore.

Q. What time were you at point A on the chart?

A. About 10 o'clock.

Q. On the morning of the 12th?

A. Yes, sir.

Q. What direction were you sailing to get to point A? How did you get to point A from the mouth of the straits, indicated on that chart?

A. From the mouth of the straits I came up the straits somewhere probably off Clallam bay. Then the wind was north east and I headed over toward the Vancouver shore.

Q. And on coming into the straits at that time how near did you get to Waaddah island.

A. Probably two or three miles off Waaddah island.

Q. How wide are these straits?

A. Eleven miles.

Q. And then, if you were in the middle of the straits you would be two or three miles from the island.

A. At times might be more. This is the way I went. (Indicating on chart.)

(Testimony of Captain Lauer.)

Q. Mark on that chart your course in the straits from the mouth of the straits up to point A, with a line.

A. As far as my recollection goes somewhere around here, and then up here, up to A.

Q. What date was this that you did all this.

A. In the morning this was.

Q. Up to the 11th where were you?

A. Off Tatoosh island.

Q. And on the morning of the 12th you were at A?

A. Yes, sir.

Q. And this shows your course?

A. Yes, sir.

Q. I will mark that line "course." Now where were you when you first put up your signal that you just testified about?

A. Probably here. (Marking position with X.)

Q. Where were you when you put up the second signal?

A. About probably a mile this side of A.

Q. And then from A you came across to B?

A. Yes, sir. (Marks course on chart.)

Q. (Mr. KERR.) Now, Captain, you came in there without any rudder. You did not follow this track across as indicated? You say you drifted back and forth?

A. No. I sailed in this way. I had a southwest wind here. On a southwest wind the vessel was heading about southeast by south. Well, whenever the wind—I sailed the vessel toward the American shore, and when the vessel would get a little closer,

(Testimony of Captain Lauer.)

I would haul the sails back so that the vessel would drift out toward the Vancouver shore *against*, as long as I was far enough off the American shore, I would haul my sails back again and sail in toward the American shore.

Q. And you made a zigzag course?

A. Yes, sir.

Q. The wind blew from¹ what direction? On the 12th, the wind was from where? You went into this position Y from the time you entered the straits until you got around to the letter Y, what direction was the wind?

A. The wind was southwest at first and then it hauled slightly to the eastward.

Q. Where were you when the wind hauled to the eastward.

A. Somewheres off Waaddah Island. I would have to refer to the log for that.

Q. Well, was it before you reached the point Y that the wind sheered? A. Yes, sir.

Q. Mark with the letter Z where the wind changed.

A. Well, this is down in the log. I will have to refer to the log.

Q. How did you come to make this right angle from Y to A?

A. Because I took bearings down there.

Q. How were you able to sail that vessel without a rudder and make a right angle here, comparatively, from Y to A?

(Testimony of Captain Lauer.)

A. The wind was northeast. The wind was southwest before and the wind hauled around to the northeast.

Q. Then when you got to A, will you tell me how you sailed to point B?

A. No, the wind was the same.

Q. The wind was blowing in exactly the same direction when you ran from Y to A as from A to B?

A. The wind was about east northeast at the point A to B. It was shifted maybe about three points at the time.

Q. From Y to A the wind was northeast?

A. Yes, sir.

Q. What was it when you ran from A to B?

A. East-northeast.

Q. The same here?

A. Not from here to there; the wind was light; the wind was changing slowly.

Q. The wind came in here—what direction was it when you came in?

A. About southwest.

Q. Well, now, the wind from A to B was east-northeast? A. Yes.

Q. What was the wind from Y to A?

A. It was changing slowly from east to east-northeast.

Q. (Mr. KING.) Just one more question. From Y to A were you sailing bow or stern first?

A. Head on.

Q. And from A to B how were you sailing?

A. Stern first.

(Testimony of Captain Lauer.)

Q. (Mr. KERR.) You traveled the whole distance from A to B sailing your ship stern foremost?

A. Yes, sir.

Q. Why didn't you turn around?

A. Because I could not.

Q. Could not turn her around? In other words the east-northeast wind was carrying your vessel stern foremost from A to B?

A. I sailed that way. I trimmed my sail so that I could sail stern foremost.

(Testimony of witness closed.)

Hearing adjourned to be resumed by agreement.

December 3, 1908.

*_____, a witness produced on behalf of the libellant, being first duly sworn, testified as follows, to wit:

Q. (Mr. KING.) Where do you live?

A. Seattle.

Q. What is your business?

A. Carpenter.

Q. Do you go to sea?

A. I used to once.

Q. Well, are you a ship carpenter or land carpenter? A. Ship carpenter.

Q. How long have you been going to sea?

A. Well, I have been going to sea for about twenty years.

Q. As a ship carpenter? A. Yes.

Q. Were you on the "Willis A. Holden" when she was picked up by the "Charles Nelson," in the Straits? A. I were.

*[Name of witness omitted in Original Transcript of Record.]

(Testimony of ——.)

Q. On the 12th of December, 1907?

A. Yes.

Q. You were on board the "Holden" then?

A. Yes.

Q. In what capacity? A ship carpenter?

A. Yes.

Q. Were you on deck when the "Nelson" came alongside? A. Yes.

Q. Was Captain Laur on deck? A. Yes.

Q. That is, Captain Laur, the captain of the "Holden"?

A. The captain of the "Chas. Nelson."

Q. No, I say ——, captain of the "Holden."

A. Yes; he was the captain of the "Holden."

Q. Did you hear any conversation at that time between the "Nelson" and the "Holden" at the time the "Nelson" came within hailing distance between the captain of the "Nelson" and captain ——, of the "Holden"? A. Yes.

Q. You were on deck at the time?

A. Yes.

Q. Say what the conversation was. Now, just state it carefully so as the stenographer will get it.

A. The captain of the "Nelson" came up on one side of us, and he sang out to the captain of the "Holden," and he says, "What do you want?" and he says, "I want a tow," and the "Chas. Nelson" came right around on the side, on the starboard bow, and the captain of the "Holden" sung out again, "Captain," he says, "This is only a tow. If you want salvage out of it, I won't take your line," and

(Testimony of ———.)

the captain on the "Chas. Nelson," he said "All right," and he took the line.

Q. Did that conversation take place before or after the line was passed from the "Nelson" to the "Holden"?

A. It was before.

Q. It was before he had taken the line?

A. Yes.

Cross-examination.

Q. (Mr. KERR.) Is that all which was said?

A. Yes, that is all that was said.

Q. Was there any other conversation?

A. Nothing except when the line carried away, she came alongside.

Q. No; I mean up to the time that the "Nelson" came up to the "Holden" until the line was passed by the "Nelson," and fastened, and she started on the voyage; that is all which was said.

A. Yes, that is all which was said.

Q. No more said at all?

A. No, no more.

Q. Well, upon which side did you say the "Nelson" came up on?

A. Starboard bow.

Q. How far away was she?

A. Oh, well, not very far; maybe about 100 feet.

Q. And all this conversation you have detailed took place between the captain of the "Nelson" and the captain of the "Holden" while she lay in that position?

A. While she was lying nearby.

Q. While she was lying in that position?

A. Yes.

Q. And while lying in that position they passed the hawser to her, did they?

A. Yes.

(Testimony of ——.)

Q. In other words, the "Nelson" came up to the position you have described, and this conversation you have described took place; while she lay in that position, the hawser was passed to her; that right?

A. Well, sure she was laying there.

Q. She did not change her position, and she lay there where she was when this conversation occurred, until the hawser was fast, and she went off with the "Holden" in tow?

A. Yes, she went off with the "Holden" in tow.

Q. You say all the conversation was just as you have detailed?

A. That is all; there was no other conversation.

Q. How was this carried on? By shouting across to each other?

A. Why, no, he did not have to do that.

Q. How is that?

A. They were so close together, they were talking easy.

Q. They stayed there and talked to each other about that?

A. Yes; he had one of these talking machines.

Q. A megaphone? A. Yes.

Q. Who had that?

A. Both vessels had it; but after they got closer together, they did not need it at all.

Q. After they got closer together they did not need it at all? A. No.

Q. They discarded those instruments?

A. What?

Q. They discarded the megaphone, and simply talked to each other across the deck?

(Testimony of ——.)

A. Yes.

Q. If there had been anything else said there, you would have heard it?

A. No, there was nothing else said.

Redirect Examination.

Q. (Mr. KING.) You don't mean the two vessels were laying there standing still all this time?

A. She did not stand still; she was drifting a little; there was a very light wind.

Q. Was the "Nelson" absolutely stopped all this time, or was she moving?

A. Oh, the "Nelson" steamed right around us; it took only about five or six minutes.

Q. And while it was steaming around you, this conversation occurred?

A. Yes, he came up on the port side and steamed around, and came around the stern, and came up on the starboard bow.

Q. Where was—what was it you said to them when they first started a conversation?

A. What is that?

Q. What was the first thing you said to them when you started a conversation?

A. The first conversation?

Q. When they first started talking to you, you said they had called out what?

A. The first conversation, the captain of the "Nelson" sung out, "Do you want a tow?"

Q. Did he talk in his natural voice, or did he use a horn?

(Testimony of ——.)

A. He used a horn at first; but after they got closer together he put it away.

Q. You say there was no other conversation? Do you mean there was no other conversation at all, or no other conversation about passing the line?

A. There was no other conversation at all.

Q. Between the "Holden" and the "Nelson"?

A. Just about her position; that is all.

Q. Were you on deck all the time?

A. Yes, sir.

Q. When did you go below after that conversation?

A. After that, I went below about 10 o'clock in the evening.

Q. You were on deck up until about 10 o'clock?

A. Yes; when the hawser carried away; then they called me up.

Q. I mean, after the conversation, you were on deck until 10 o'clock in the evening? A. Yes.

Recross-examination.

Q. (Mr. KERR.) They never said anything about the price for towing?

A. No, no prices; only the captain said he wanted a tow; no price mentioned at all.

Q. You did not hear the captain of the "Nelson" say to the captain of the "Holden" that he would not make any agreement with him for towage?

A. No, did not hear that.

(Witness excused.)

[**Testimony of Frank Walker, for Libelant.**]

FRANK WALKER, a witness produced on behalf of the libelant, being first duly sworn, testified as follows:

Q. (Mr. KING.) Where do you reside, Mr. Walker? A. Seattle.

Q. How long have you resided in Seattle?

A. About two years; about fifteen years on Puget Sound.

Q. What is your business?

A. Marine surveyor.

Q. How long have you been in that business?

A. About ten years.

Q. What are your duties as a marine surveyor—what do they consist of?

A. Well, surveying the damage to vessels, appraising the values of vessels and general work in connection with building and repairing.

Q. Repairing of what vessels?

A. All vessels, yes.

Q. Does that in any way necessitate your familiarity with the construction of vessels, in ascertaining the value of the vessels? A. Oh, yes.

Q. Are you acquainted with the steam schooner "Charles Nelson"? A. Yes, sir.

Q. The "Charles Nelson," or the "Charles A. Nelson"?

Mr. KERR.—The "Charles Nelson."

A. Yes.

Q. How long have you known her?

(Testimony of Frank Walker.)

A. Oh, I have known her many years; I could not say how many.

Q. On this coast? A. On this coast, yes.

Q. When did you see her last?

A. I saw her last in Tacoma; I will have to look at my notes—on November 26th.

Q. 1908? A. 1908, yes.

Q. Did you examine her then? A. I did.

Q. What was your purpose in examining her at that time?

Q. My purpose in examining the vessel at that time was for the purpose of forming an opinion as to her value.

Q. Did you give her a thorough examination?

A. Gave her a very fair examination for the purpose, yes.

Q. Did you ascertain, or did you form, on examination, an opinion as to her value? A. I did.

Q. What was her value, according to your opinion, from that examination?

A. I think I placed her value at \$38,000.00.

Q. At that time? A. At that time, yes.

Q. From the examination you made, could you tell whether or not there was any recent mediments or improvements made to her?

A. Yes, I could tell there had been considerable strengthening done to the vessel within this this last year, or eight months.

Q. Was she equipped for passengers?

A. No.

Q. She is not?

(Testimony of Frank Walker.)

A. No, I do not think so. I did not see any passenger accommodations on her; there may be two or three rooms that could carry a passenger in; but she is not a general passenger vessel.

Q. Do you know what was the value, or what in your opinion is the value of the improvements that you say were made within the last year or eight months?

A. Yes; I should judge five or six thousand dollars' worth of work had been done to the vessel.

Q. That is your opinion as to the steam schooner?

A. That is my opinion as to the steam schooner, yes; single-deck vessel.

Q. Are you acquainted with the four-masted schooner, "Willis J. Holden"? A. Yes.

Q. Did you have occasion to examine her lately?

A. I examined her a great number of times; the last real examination I gave the vessel was somewhere in January, this year.

Q. What was your purpose in making that examination?

A. Oh, the vessel having returned in a damaged condition; returned from sea in a damaged condition, the loss of her rudder, and so on.

Q. Where was she then when you made that examination?

A. At Hall Brothers, at Eagle Harbor. I first made a casual examination of her in Port Blakely, previous to her going to Eagle Harbor.

Q. What was her condition then?

A. Well, she was in very bad condition then.

(Testimony of Frank Walker.)

Q. Well, tell us what was the—what you found defective in her.

A. Well, I wrote a report at the time; a detailed report in connection with Captain Gibbs; at the time; I could not give you each detail now.

Q. Give us them as near as you can recollect.

A. Her rudder was entirely gone—

Mr. KERR.—I object to that. If the surveyor made a report on the vessel at that time, that report is the best evidence. His testimony concerning what the report contained is incompetent. I have no objection to the admission of Captain Gibbs, and Mr. Walker's report, if you have it. I ask that this report of this survey go into the record.

Mr. KING.—We are not asking the witness anything about the report. We are asking him what he found at the time.

Mr. KERR.—If he made a report of it in writing, that is the best evidence of what he found. I want the records to show that Captain Gibbs is here, and has the report; and I insist on the report going into the record.

Mr. KING.—You can put the report in the record if you want it.

Q. What did you find was the condition of the "Holden" at the time you made that examination?

A. She was in a badly damaged condition. Her rudder was gone, considerable of the headgear and rigging was carried away, she was cut and chaffed in many places; and when placed in the dry dock, the vessel was considerably hogged.

(Testimony of Frank Walker.)

Q. What cargo was aboard then, do you recollect?

A. The lower hold, the cargo was in the hold. The aft cargo had been removed at Port Blakely.

Q. Did you form any opinion as to the value of the "Holden" without her cargo at that time?

A. I made a valuation of the vessel at that time; yes.

Q. What valuation was it?

A. \$27,500.00. I think I am correct in that. I have a copy of that statement here. (Produces statement.) Yes, \$27,500.00.

Cross-examination.

Q. (Mr. KERR.) Did you examine the "Nelson" for the purpose of ascertaining what passenger accommodations she had?

A. No, sir; I examined the "Nelson" for general—

Q. From the examination that you did make, you think she had one or two or three staterooms that might be used for passenger accommodations?

A. No, I did not say I thought so. I asked the master, "Are you a passenger vessel?" and he says, "No." I says, "Have you any passenger accommodations?" and he said, "No."

Q. You did not make any examinations for the purpose of ascertaining the extent of her passenger accommodations?

A. Well, I took a general look around the conditions.

(Testimony of Frank Walker.)

Q. Are you willing to state to the Court, now, that in your judgment she had only two or three rooms that might be used for the accommodation of passengers?

A. I will say that I saw no accommodations for passengers.

Q. Did you examine her license?

A. No, sir; I did not examine her license.

Q. Do you know how many passengers she was authorized to carry by the government inspector?

A. I do not.

Q. Was your examination of the entire vessel of the same character as your examination with reference to her passenger accommodations?

A. The examination I made of that vessel was the usual examination we made in cases of placing the value on the vessel.

Q. I did not ask you what was the usual examination; I am asking you if you made the same kind of an examination with reference to the entire vessel as you made with reference to her passenger accommodations?

A. No, sir; I made a much closer examination of the vessel.

Q. How long were you aboard her?

A. About half an hour, I suppose.

Q. You weren't below deck at all?

A. No, sir; there was cargo in below-decks.

Q. You examined the machinery?

A. Practically, yes.

(Testimony of Frank Walker.)

Q. Well, practically. What do you mean by that? I want to get at what you did.

A. Well, I made a general look around the vessel, and taking into consideration what I knew of the vessel, and her age, and all the rest of it; that is, we were to place a valuation on the vessel.

Q. And this valuation you placed upon the vessel was what you think it would bring in the open market? A. That is just it.

Q. How closely did you examine her machinery and equipment?

A. I knew sufficient of the machinery and equipment without going into details.

Q. You knew all that? A. Yes.

Q. How did you know that?

A. I know it by the age, and the general record of the vessel, yes.

Q. What character of machinery did she have in her?

A. She has a double expansion machinery in it.

Q. What make?

A. I cannot tell you the name of the manufacturer of the engine; but I can of the boilers. They are Babcock & Wilcox boilers; and very old.

Q. What are the engines?

A. I believe they were built by the Fulton Iron Works in San Francisco.

Q. How old are they? A. The engines?

Q. Yes.

A. The same as the vessel, I presume.

Q. Do you know how old they were?

(Testimony of Frank Walker.)

A. The same age as the vessel.

Q. What horse-power?

A. The horse-power would run about 500.

Q. Suppose, as a matter of fact, it was 700 or 750?

A. Well, they might work up to that. I can give you the dimensions of the engine. 15" × 25 ¾" × 42 ½" × 30" is the dimension of the engine.

Q. Did you take those measurements at that time?

A. I took those measurements from the listed description of the engine.

Q. Out of what? A. The American Record.

Q. You did not verify them by examination?

A. No, sir, I did not verify them by any examination, because I could not ask the engineer to open up the engines to measure them.

Q. You say there had been about five thousand dollars' worth of repairs made on her recently?

A. Yes, I should judge that. They were strengthening backs along the deck, the full length of the deck, fore and aft; one on each side of the hatch coaming.

Q. When were those put in?

A. Those were put along in April, 1908. There were strengthening timbers strung right along her bulwarks, right along the rail.

Q. When were they put in?

A. At the same time.

Q. What was the cost of doing that?

(Testimony of Frank Walker.)

A. I can't say the cost. I could simply make an estimate of about five thousand dollars would be the expenditure upon what I saw, the strengthening that had been put into the ship.

Q. Now, right after the "Holden" was towed in here to Port Blakely, and her deckloads removed, and the vessel taken to the marine ways in Eagle Harbor, you and Captain Gibbs made a survey of the vessel? A. Yes.

Q. Have you seen the survey since you made it?

A. Yes, a good many times.

Mr. KERR.—Captain Gibbs, will you let me have the copy you have?

The WITNESS.—I have not seen it recently.

Q. I will ask you to examine this document, and say if this is the survey that you made?

A. Yes, that is my survey; this is my signature.

Q. And that was made at the time it purports to have been made?

A. Yes, that was made at the time.

(Witness excused.)

[Testimony of Captain S. B. Gibbs, for Libelant.]

Captain S. B. GIBBS, a witness produced on behalf of the libelant, being first duly sworn, testified as follows:

Mr. KERR.—I will admit the Captain's qualifications, so you need not spend any time on that.

Mr. KING.—Very well.

Q. (Mr. KING.) You are the captain of the schooner "Willis A. Holden"? A. Yes, I am.

(Testimony of Captain S. B. Gibbs.)

Q. You knew of the accident which occurred to her in the Straits in December, 1907, and of her arrival here at Port Blakely? A. I did.

Q. When did you examine her? About that time?

A. About January, when she was on the drydock.

Q. What did you find to be her condition at that time?

A. I found considerable damage to the headgear; considerably chafed under the counters, and rudder gone.

Q. What was your purpose in making an examination at that time?

A. In order to make a survey, and report on the vessel to the owners.

Q. To whom? A. To the owners.

Q. For what purpose did the owners want this report?

A. Well, for insurance purposes, I imagine.

Q. Well, don't you know?

A. Why, yes; it would be for insurance purposes.

Q. Did you place the valuation upon the schooner at that time for insurance purposes?

A. I did not.

Mr. KERR.—The records will show that I demanded Captain Gibbs' report, if he had it here, made at the time, in writing; and I will state, that if you do not offer it, I am going to offer it as a part of Captain Gibbs' cross-examination. I have read it, and what Mr. Walker and Captain Gibbs stated at the time of that report is good enough for me.

(Testimony of Captain S. B. Gibbs.)

Mr. KING.—But the witness states that there is no value put in the report.

Mr. KERR.—If that is true—I supposed it did in a report of that kind; but that report can go in for whatever it is worth.

Q. You made a written survey of the vessel at that time? A. I did.

Q. I hand you a paper purporting to be signed by you and Mr. Walker, and I will ask you to examine this signature and say if that is your signature.

A. It is.

Q. Is that the signature of Mr. Walker?

A. Yes.

Mr. CLISE.—I will offer this in evidence.

Mr. KERR.—No objections.

(Paper marked Respondent's Exhibit No. 3, and returned herewith.)

Q. From your examination made at that time, what, in your opinion, was the value of the schooner "Willis A. Holden"?

A. I should say about \$30,000.00.

Q. Now, are you acquainted with the steam schooner "Charles Nelson"? A. I am.

Q. How long have you known her?

A. Well, I have known her ever since I have been on the coast here; that is, I have known of it more or less in that time.

Q. How long has that been?

A. Seven years.

Q. Have you ever examined her?

(Testimony of Captain S. B. Gibbs.)

A. I have been aboard her several times, and the last time I examined her was on the 26th of November.

Q. Of this year? A. Yes, of this year.

Q. Did you ever examine her at any time prior to that time?

A. No, only as a casual observer, looking the ship over.

Q. Who was present with you when you made that examination? A. This last one?

Q. Yes. A. Mr. Walker.

Q. What was the purpose on making that examination?

A. For the purpose of determining her value.

Q. What in your opinion was her value at that time?

A. Her value was based on her condition last January, when she picked up the "Holden," not at the present time, but the valuation was made at the time she picked up the "Holden."

Q. What was your appraisal value of the steam schooner "Charles Nelson," as you found her on the 26th day of November, 1908?

A. I would have to take the valuation which was given last—as she was last January, and add a certain amount for repairs that were made to her.

Q. Well, what do you think was her value on the 26th day of November, 1908?

A. I should say about 42,000.00 dollars.

Q. And how were you able to determine what was her value last January?

(Testimony of Captain S. B. Gibbs.)

A. By looking at the repairs that had been put into her last April, and deducting a certain amount from those repairs which would make her worth about \$38,000,000 last January.

Mr. KERR.—I want to enter an objection to this testimony on the ground that it was admitted in the answer that the value of this steam schooner was \$50,000.00.

Q. What repairs did you notice had been made to the "Charles Nelson" since last January?

A. She had put very heavy girders all along each side, of the hatch, and extending nearly the whole length of the vessel, and folded down through the beams and two very heavy clamps put along her rails extending nearly the whole length of the ship.

Cross-examination.

Q. (Mr. KERR.) Was that the insurance value of the vessel, in your judgment, or was it the amount value? A. The market value.

Q. The market value? A. Yes.

Q. Where did you examine her? Did you examine her in San Francisco?

A. No, sir, I never did, but on account of reports from her in San Francisco, I know two years ago she was picked up leaking, some two years ago and towed in. I get reports from San Francisco from every ship down there.

Q. What I am getting at is, when did you make the examination of the "Nelson," or where did you make it in November last?

A. This was last November in Tacoma.

(Testimony of George F. Thorndyke.)

Q. You were aboard then?

A. Yes, sir, I was aboard.

(Witness excused.)

[**Testimony of George F. Thorndyke, for Libelant.**]

GEORGE F. THORNDYKE, a witness produced on behalf of the libelant, being first duly sworn, testified as follows:

Q. (Mr. KING.) You reside in Seattle?

A. Yes.

Q. How long have you resided here?

A. Twenty-five years.

Q. What is your business? A. Shipping.

Q. How long have you been in the shipping business? A. That long; twenty-five years.

Q. What position did you occupy in the Globe Navigation Company? A. Manager.

Q. How long have you had that position?

A. Since July, 1907.

Q. Since the company was organized?

A. No; I was the traffic manager from 1900 until July, 1907, and then made manager, had general supervision of the company's affairs, though, and operation and traffic.

Q. The Globe Navigation Company operates several schooners, steam schooners as well as the "Willis A. Holden"? A. Yes.

Q. Have you had any occasion to ascertain the rates or towage charges from Cape Flattery, and in the neighborhood of Cape Flattery to Port Townsend? A. Yes.

Q. For vessels the size of the "Holden"?

(Testimony of George F. Thorndyke.)

A. Yes.

Q. Are you familiar with what is the fair and reasonable charges of a vessel the size of the "Holden" from the sea in the vicinity of Cape Flattery, to anchorage at Port Townsend or Port Angeles? A. Yes.

Q. What is a fair and reasonable towage charge for schooners the size and tonnage and burden of the "Holden," and loaded as the "Holden" was on December 12th, 1907, and Cape Flattery, in the vicinity of Cape Flattery, or in the Straits of Fuca to an anchorage at Port Townsend?

A. In good or bad condition?

Q. In good condition; just exactly as this boat was? A. \$200.00.

Q. Would there be any variation from that if the vessel was in bad condition? Just answer yes or no.

A. Yes.

Q. Was it more or less? A. More.

Q. Take it, then, that the vessel was in the condition that the "Willis Holden" was actually, with the loss of her rudder, what would be the fair and reasonable compensation for towage from where she was picked up to the eastward of Waddah Island to Port Angeles? A. Double rate; \$400.00.

Q. Port Angeles is not as far as Port Townsend?

A. Port Angeles, \$350.00.

Mr. KERR.—No cross-examination.

(Witness excused.)

(Testimony of Captain William Gove.)

Seattle, Washington, November 16, 1908.

Continuation of proceedings pursuant to agreement.

Present: Mr. KERR, for the Libelant.

Mr. KING, for the Claimant.

[Testimony of Captain William Gove, for Claimant.]

Captain WILLIAM GOVE, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. KING.) Your name is William Gove?

A. Yes, sir.

Q. What is your business, Captain Gove?

A. I am master on Puget Sound tugboats.

Q. Master mariner? A. Master mariner.

Q. How long have you been in that business, Captain?

A. Well, we will call it forty years.

Q. During that time how long have you been on Puget Sound?

A. Well, I came on the Sound, on the coast here, in 1861.

Q. Been on the coast ever since?

A. Yes, sir.

Q. Been in Puget Sound during that time as tugboat captain?

A. I sailed on the coast four years, coasting up and down; towboating ever since.

Q. Between what points has been your general run on tugboats?

A. Well, from Olympia to all the British ports; Columbia River, San Francisco.

(Testimony of Captain William Gove.)

Q. Are you familiar with the Straits of Fuca from Flattery, in? A. Yes, sir.

Q. How long have you been sailing there?

A. Well, I have been towboating ever since 1864.

Q. I am speaking now with reference to the Straits of Fuca. How many years' experience have you had in and out of the Straits of Fuca?

A. I have been there ever since 1864. As I said before I was on sailing vessels between here and San Francisco from 1861 to 1864 and then I started towboating.

Q. Do you know the schooner "Willis A. Holden"?' A. Yes, sir.

Q. Do you know her size?

A. I do not know, but somewheres in the neighborhood of a thousand tons.

Q. She is a four-masted schooner, is she not?

A. Yes, sir.

Q. Did you ever tow her? A. Yes, sir.

Q. More than once?

A. I think so; I am not positive; I know I towed her once and I think I towed her more than once.

Q. Now, Captain, I will call your attention to Respondent's Exhibit 1, and ask you to look at the point marked on that exhibit 1 as B. Now, if the schooner "Willis A. Holden" was about three-quarters of a mile to a mile east of Waaddah Island, at the point marked B at 4 o'clock in the afternoon, with a breeze of perhaps ten or fifteen miles an hour blowing from the east-northeast, with her rudder gone, with what is known as two patent anchors of

(Testimony of Captain William Gove.)

four thousand pounds each, and 180 fathoms of chain cable, if, under these conditions the schooner had anchored at the point marked B, to the eastward of Waaddah Island, under these weather conditions, and in the night a gale had come up, blowing fifty miles an hour from the southwest, in gusts and squalls, what, in your opinion, would be the chances for or against the "Holden's" riding out that gale under these circumstances?

Mr. KERR.—I object. The witness has not shown himself to be qualified, and it is not a proper hypothetical question.

A. Well, if the wind was southwest and she was anchored here, she would have a good lee; the southwest wind blows right off here. You see it is marked here thirty fathoms.

Q. Forty fathoms was the testimony, forty fathoms of water. I will add that to my question.

A. It seems to me with 180 fathoms of chain and forty fathoms of water, she ought to hold if it does blow. If she don't she would get a fair wind up the straits.

Q. Are you acquainted with the coast in the vicinity of the point marked B in exhibit 1?

A. Yes, sir.

Q. What sort of holding ground is it, do you know? A. Well, I expect it is rocky.

Q. Well, is that good or bad?

A. We don't call that real good anchorage, rocky bottom, but that would be close in shore. Now, out here it might be different bottom altogether. I know close to the beach it is rocky.

(Testimony of Captain William Gove.)

Q. If the wind blew strong from the southwest, do you know from your experience, that is outside, if it blows strong from the southwest outside, what its general direction is in the straits, from your experience?

A. Well, right at the Cape, if southwest, it blows in this direction, right across.

Q. Right at the Cape?

A. From the southwest it would be blowing northeast. That would be about this direction.

Q. Which direction do you call this?

A. It would blow from the southwest to the northeast right at the Cape. But as you come up this way it draws more up the straits. After you get up here it would draw straight up, probably draw off the north shore. Very often strong up here; it gets off the shore up here.

Q. Up here means the point marked D?

A. Yes, just below Race Rock. The wind usually blows following the straits, draws up, and of course right at the cape it draws more across.

Q. You say you have been captain of tugboats?

A. Yes, sir.

Q. As such you have towed vessels similar to the "Holden"?

A. Yes, sir. I towed one ship, took her off the Vancouver shore, and got on up as far as just below Stripe Peak, about forty miles. I have forgot the ship's name, but she got on the Vancouver shore. She came down and got her rudder on a rock and jammed the rudder and she was leaking. I got her

(Testimony of Captain William Gove.)

nearly up to Crescent bay and found she was sinking and I pulled for the beach and she sank on me before I got her in. That was nearly forty miles I towed her and would have towed her clear on up without any trouble if she had not sunk on me. They could not move the rudder at all, it was just solid.

Q. Do you know the steamer "Charles Nelson"?

A. Yes, sir.

Q. Familiar with the power she has?

A. No, I am not familiar with the power.

Q. You have seen her? A. Oh, yes.

Q. Never commanded her or worked her?

A. No, sir.

Q. Supposing the "Nelson" had taken the "Holden" in the condition in which I have mentioned, that is, that she was without any rudder, at the point B, the wind being north-northeast, blowing in the neighborhood of ten miles an hour or thereabouts, and towed her to the point marked C on exhibit 1; taking her from point B between four and five o'clock in the afternoon, and it was somewhere about midnight when she reached C. At C the wind changed to a strong southwest wind, and the tow-line broke. By the time the tow-line was gotten on board again, the "Holden" had drifted, moved to the point marked D on the chart, the wind still continuing at fifty miles an hour or thereabouts from the southwest. When the towboat got the "Holden's" hawser again at the point marked D, what, in your opinion, would have been good seamanship as

(Testimony of Captain William Gove.)

to saving the vessels, both of them, under these conditions what should she have done then?

Mr. KERR.—I renew my objection to the same as to the last hypothetical question.

Q. The conditions at that time being that the tow-line had just been made fast, the "Holden" was without her rudder and there was a strong fifty-mile gale in squalls from the southwest.

A. Well, if it had been my case and I had any doubt about the hawser carrying away again, I should have tried to hold on, hold him head to the wind. That would be the only way they could manage her.

Q. Well, do you mean by that that they would have towed her or just held her there, perhaps work over on the south shore again, if they were four miles from the British shore and it was ten miles across here. What would you have done under these circumstances?

A. That would depend on circumstances. But if I had a hawser that I was afraid would carry away every moment, I would have tried to hold on until the wind moderated, but it seems to me that the hawser must have been poor if he parted it so many times.

Mr. KERR.—I move to strike the answer as incompetent and a supposition.

Q. I show you a paper marked exhibit 2. Suppose the letter A represents the schooner "Holden" and the letter B represents the "Nelson" towing her. The wind is fifty miles an hour from the south-

(Testimony of Captain William Gove.)

west, and the ships were in that position after the hawser had been taken on board after parting, and the ships were in the position designated as No. 1. The tug then worked the ship and herself around to the position designated as position No. 2, bringing the wind on the port side of the "Holden." The "Holden" then kept drifting to starboard and the tug crossed her bow under a full bell to the position marked position 3 when the hawser broke—I would like your opinion.

A. Was that the second or the first time?

Mr. KERR.—I object as an improper hypothetical question, not based on any facts in the case.

Q. I ask your opinion as to the seamanship of these maneuvers, and whether it was such as you would have done under such circumstances, and whether in your opinion it was the best possible seamanship under the circumstances—reasonably good seamanship under the circumstances?

A. Well, I certainly would not have tried to turn around at full speed knowing my hawser was not sufficient to hold the schooner, and had already parted once. I should come around very easy until I could get a good strain on it.

Q. Now, supposing you and your tow were in the situation marked in position 1, the wind and the weather being as I have described, what would you have done under these circumstances, and what, in your opinion, would have been reasonably good seamanship under these circumstances?

Mr. KERR.—I renew my last objection.

(Testimony of Captain William Gove.)

A. He was heading in the right direction to get to the American shore.

Q. Suppose you were in position No. 1, under these conditions, what would you have done, what would have been good seamanship?

A. Well, I should have tried to get her on the south shore because you could get anchorage anywhere along on the south shore.

Q. Would you under these circumstances got her into the position marked 2, if you could have avoided it?

A. Well, I do not suppose I would if I could have avoided it.

Q. Do you believe it could have been avoided by good seamanship?

A. Well, it is hard to tell. Sometimes we do not know the exact circumstances.

Q. Did you see the "Holden" and the "Charles Nelson" on December 13th, 1907? A. I did.

Q. Where did you see her?

A. I saw her about halfway between Race Rocks and Angeles.

Q. What were you doing there, Captain?

A. I was on my way down.

Q. Where were you going, Captain.

A. I was bound down for the "Holden." I was ordered to Neah Bay to tow the "Holden."

Q. What tug did you have in command at that time? A. The "Wanderer."

Q. What is her size, tonnage?

A. She is 125 tons.

(Testimony of Captain William Gove.)

Q. What is her horse-power? A. 500.

Q. What sort of gear did you have for towing?

A. Oh, we had good gear—11-inch hawsers.

Q. What did you say when you saw the “Holden,” did you keep right on to Waaddah island?

A. No, I spoke the captain of the same and asked if he wanted assistance.

Q. The captain of the “Nelson”?

A. Yes, sir.

Q. You were sent out to assist the “Holden”?

A. I was.

Q. What did the captain of the “Nelson” say?

A. I could not get any answer out of him at all; he did not make any answer.

Q. Whereabouts in the straits was he then, how near to Angeles?

A. He was about in the middle of the straits.

Q. What did you do?

A. Then I spoke the captain of the “Holden.”

Q. Captain Lauer, you spoke?

A. Yes, and asked him if he wanted me to stay by him and he said yes.

Q. What did he do—did you stay by?

A. I stayed by until they got him into Angeles.

Q. Did anything happen between the time you sighted them and the time they got into Angeles?

A. They parted the hawser.

Q. Did you see the hawser part?

A. Yes, sir.

Q. Describe what occasioned it to part, in your judgment?

(Testimony of Captain William Gove.)

A. Well, he was very near into Port Angeles that time.

Q. That is the "Nelson" was?

A. Yes. And she took a sheer for Victoria.

Q. Who did? A. The schooner.

Q. The "Holden"?

A. Yes, and he tried to swing her the other way and his hawser carried away again.

Q. The "Nelson" tried to swing her the other way? A. Yes, sir.

Q. What do you think was the reason the hawser broke?

A. I do not think it was strong enough to hold her.

Q. You think then a sufficiently strong hawser would not have broken?

A. No, I do not think if he had a sufficiently strong hawser.

Q. Supposing that hawser was as a matter of fact a new hawser, a new ten-inch manila hawser, do you think it should have broken under that strain?

A. No, I do not think it should, a new ten-inch hawser.

Q. Then if that hawser was a ten-inch manila hawser and broke under that strain, as you saw it at that time, should you or should you not say it had been used to some extent?

Mr. KERR.—I object as incompetent.

A. Well, it either had—something must be wrong with the hawser unless he kept on full power. Under these circumstances he should have slowed her down.

(Testimony of Captain William Gove.)

Q. It would not have been good seamanship to have kept on full power then?

A. Well, I would not have done it.

Q. Well, that is what we want to know. How did you come to go down the straits with your tug "Wanderer" looking for the "Holden"?

A. We were ordered there.

Q. By whom?

Mr. KERR.—I object as immaterial.

A. By the Puget Sound Tugboat Company.

Q. What instructions did you have, if you know?

Mr. KERR.—I object as incompetent and immaterial.

A. Why, the "Holden" was reported off the Cape in distress and we were ordered down to assist her and tow her.

Q. When you saw the "Holden" out about the middle of the straits making for Angeles with the "Nelson," how was the "Nelson" with reference to her being high or low in the water, if you recollect? Did she look as though she had a cargo or did she look as though she was light?

A. I think she had some cargo; I am not sure about that.

Q. Did the "Holden" at that time have any list, to your recollection? A. Yes, sir, she did.

Q. To which side?

A. I think it was a port list; I am not positive.

Q. Much of a list?

A. Three or four feet, I should think.

Q. You say you do not know the power of the "Nelson"? A. No, I do not.

(Testimony of Captain William Gove.)

Q. Did the "Holden" have any flags flying at that time?

A. I do not think so; I do not remember.

Q. Did she have any gear carried away, if you could see?

A. No, I could not see any, except the rudder was gone.

Q. Did she have any wreckage or gear towing astern or alongside?

A. Yes, she had something towing astern they tried to steer by, something made out of lumber, I think.

Q. Did you see what it was?

A. Well, it was a sort of raft; he said he steered her in by it.

Q. Did you notice her bows particularly?

A. No, I do not remember seeing anything about the bows.

Q. Do not know whether there was any wreckage on her bows or not?

A. No, I do not think there was; I do not remember seeing any.

Cross-examination.

Q. (Mr. KERR.) Captain, the ship that you towed in that had a jammed rudder, do you know how it was jammed?

A. Yes, had gone down on a rock.

Q. What position was it in—it was not carried away, simply jammed?

A. I do not know what position—you mean whether straight or whether on one side?

(Testimony of Captain William Gove.)

Q. Yes. But if it was straight it would be all right, even though it was jammed, to assist in the maintenance of the direction of the tow, would it not?

A. I do not think so.

Q. Do not think it would be of any assistance whatever? A. Not a bit.

Q. Well, you would naturally expect a vessel without any rudder at all, having a list of three or four feet, in a gale approximately fifty miles an hour blowing in gusts and in the tow of a tug to slue about more or less, would you not.

A. Yes, sir.

Q. That is what she would do, would she not, captain? A. Yes, sir.

Q. Now, would you expect the—calling your attention now to Exhibit 2—wind coming from the southwest, to affect the vessel in position No. 1, where it was blowing practically broadside, the list being to port, as much as you would if she was practically headed into the wind.

A. You mean that it would give her more list?

Q. No. How would it affect the handling of her? She had no rudder and she had a list to port as you say, three or four feet, and broadside to the wind, you would not expect to be able to keep a rudderless vessel in that position?

A. Keep in that position better than you could run before it.

Q. I understood you to say that you would have hauled her up into the wind and laid there until the storm died?

(Testimony of Captain William Gove.)

A. I would if I thought my hawser—

Q. If you had thought your hawser would not stand the strain you would have headed right into the wind with your tow and laid there and held her?

A. Yes, sir.

Q. You would not simply have laid broadside to the wind? A. Oh—

Q. Just answer the question. Would you have attempted instead of hauling her up into the wind as you have stated, laid broadside?

A. No, I do not think I would.

Q. Don't you know you would not.

A. No, I do not think I would. She would hold probably better right head to the wind.

Q. Calling your attention to this Exhibit 2, this arrow showing the direction of the wind when this vessel came around into position 2, that is what he did, was it not, head her into the wind?

A. Yes, I think so.

Q. Now, do you know of any such iniquity in the construction of sailing vessels generally that when you head them into the wind, shift from position 1 to position 2 that they will go off six or seven points one way or the other?

A. Six or seven points off head to the wind?

Q. If you headed into the wind they generally stay in the wind, if you have a strain on them?

A. Yes, sir.

Q. Now, when a vessel is headed into the wind she may drop off to port or starboard?

(Testimony of Captain William Gove.)

A. No, if you put power enough on to hold her, she cannot go off either one way or the other but very little.

Q. Well, a gale blowing fifty miles an hour, with the "Holden" having that list of three or four feet, is it not possible that a vessel the size of the "Nelson" with a horse-power of 700, that when you get her around in position No. 1, broadside to the wind, that this rudderless boat would be carried around and haul the "Nelson" around with her?

A. No, not if the "Nelson" has a horse-power suitable to pull.

Q. Assuming that she had a practical horse-power of the kind that was described to you?

A. Well, it would not matter if she had three or four times that horse-power if it was not suitable to pull.

Q. Suppose the thing that caused the hawser to part was the sluing of the vessel back and forth on the hawser on the bulwarks of the vessel; assuming that that was the fact.

Mr. KING.—I object; there is nothing in the evidence to justify that.

A. It could not be cut off by the bulwarks.

Q. Suppose it was cut off by the sailing vessel on the aft deck of the "Nelson" by her sluing, it is possible to do that, is it not?

A. The hawser is fastened on the bit and she could not slue around so that the hawser could be cut off by the bulwarks.

(Testimony of Captain William Gove.)

Q. Would that increase the strain or diminish the strain of the hawser, the sluing of this vessel back and forth?

A. Of course that would increase the strain.

Q. What kind of a gale of wind was blowing when you handled the other vessel with the jammed rudder?

A. Well, there was very little wind at that time.

Q. That is the only experience that you had in Puget Sound in towing a vessel without a rudder?

A. No, sir, we have had several.

Q. Several more of the same kind?

A. Yes, towed one schooner from Smith island that was ashore on Smith island.

Q. The Minnine Kane?

A. No, I cannot think of her name. She did not have any rudder. Her rudder was useless. We have had several vessels towed without rudders. We towed one vessel from Winslow down to Ballard without a rudder. She never had any rudder shipped at all.

Q. There is a great deal of difference, Captain, between towing a rudderless vessel in a smooth sea and towing her in a gale of wind?

A. Oh, yes, that is very true.

Q. Now, you say you sighted the "Nelson" with the "Holden" in tow about the middle of the straits on the 13th?

A. Yes, sir.

Q. What time of day was that?

A. That was in the morning, I think, about eight o'clock.

(Testimony of Captain William Gove.)

Q. How close did you approach these two vessels?

A. I went near enough to speak to the captains.

Q. Through a megaphone? A. Yes, sir.

Q. Did you remain with them from that time up until the hawser parted near Port Angeles?

A. Yes, sir.

Q. How close to them?

A. Oh, it is perhaps as close as from here down to the corner of that building, I suppose a couple of hundred yards.

Q. And you do not know what caused the hawser to break then further than you observed that this rudderless "Holden" sheered off and headed across the straits toward Vancouver island?

A. Yes, she sheered off for Victoria, and of course they wanted to take her the other way.

Q. They were towing her almost in the opposite direction?

A. Yes, sir; he was trying to swing her the other way.

Q. And she just came around—

A. She headed this way and the steamer headed this way.

Q. She virtually headed around so that the stern of the "Holden" was in the direction of the "Nelson"?

A. Not quite as bad as that, they were not quite at right angles. For instance the boat was heading this way and the steamer was heading this way, nearly at right angles.

(Testimony of Captain William Gove.)

Q. I understood that, but indicate here on this chart about what her then position was where you first sighted her?

A. When I first sighted her she was about here somewhere. I should think somewhere about there, at the point marked K.

Q. Where I put the letter K on the chart.

A. Yes, as near as I can remember.

Q. Now, where was she when the hawser parted?

A. She was then right about here.

Q. Right by Ediz Hook? A. Yes, sir.

Q. Where was she with reference to this red circle marked G?

A. That is about a mile and a half; it is not very far from there.

Q. Now, they were headed in around Ediz Hook, were they?

A. The schooner was headed this way; she had taken a sheer.

Q. Before she took the sheer?

A. They were coming up here this way.

Q. They were running on a line from K to G?

A. Yes, sir.

Q. And headed in practically the direction of a line drawn from K to G? A. Yes, sir.

Q. Now, you say all at once the "Holden" sheered off in the direction of Victoria?

A. Yes, sir.

Q. That is she took a position which would be represented by the angle I have indicated here with the letter U?

(Testimony of Captain William Gove.)

A. Yes, sir. The "Nelson" was trying to swing the other way. He wanted to get her in.

Q. The "Nelson" would occupy the position I have indicated out here with the letter R, is that right? A. Yes, sir.

Q. Now the "Holden" swung around on this arm so that she faced over toward Victoria?

A. Yes, sir.

Q. Now, where would be the line then fastened to the stem of the "Holden"? It would come across her bulwarks, would it not?

A. No, it would come across her bow, of course.

Q. Come in contact with any of her tackle?

A. Depends on which side the hawser was. I do not know which side it was on; if on the starboard side it would be all clear.

Q. Where did it break that time, Captain?

A. I do not know; I was nearer to the schooner.

Q. You do not know where it broke?

A. No.

Q. And then they picked her up again and took her inside and put her to anchor?

A. Yes, sir. We towed her from there up to Port Blakely.

Q. Do you know Captain Renselius, the captain of the "Nelson"?

A. No, I do not know him; I am not acquainted with him. It was blowing strong when we towed her but I put two hawsers on her, one on each bow, so when she took a sheer off the other hawser checked her.

(Testimony of Captain William Gove.)

Q. You had two tugs to bring her up?

A. Yes, but I had one.

Q. You virtually put her in a bridle, didn't you?

A. Yes, sir.

Q. During the time you observed the "Holden," I wish you would state to the Court how she acted?

A. Well, she would go along perhaps for half an hour all right and then for some reason or other she would take a sheer either one way or the other.

Q. There was no way of avoiding it?

A. No.

Q. Captain Nelson could not prevent that, could he? A. No, he could not prevent it.

Q. About what would you say was the rate of the wind at the time you observed them, about daylight, about how strong was the wind?

A. Oh, I think it was blowing about 25 miles an hour.

Q. You would expect her to act a great deal worse where the wind was blowing fifty miles an hour? A. Yes, of course she would.

Q. You are not here to say that the captain of the "Nelson" in maneuvering that vessel out there that night in a fifty mile gale did not maneuver her right?

A. I do not know anything about that. I have not anything to say about the maneuvering part. Probably he did the best he could. I do not think the "Nelson" was prepared to tow ships anyway. He probably did the best he could under the circumstances.

Q. Your company does the towing for the owners of the "Holden" don't it? A. Yes, sir.

(Testimony of Captain William Gove.)

Q. The holding ground in and around Waaddah island is rocky, is it not.?

A. Yes; above Waaddah island it is rocky.

Q. You would not advise anybody to go down there and anchor a ship of a thousand tons that had a list of three or four feet one way or the other, as a place to anchor, would you?

Mr. KING.—I object as not proper cross-examination.

A. That would depend on circumstances—if there was nothing else to do.

Q. You never have seen ships anchor there?

A. Yes, I have seen ships anchored all over Cape Flattery, in worse places than that, because they had to anchor in order to save themselves from going ashore.

Q. That was from necessity? A. Yes, sir.

Q. Well, you would not have anchored the "Holden" in there that close to that shore and on that rocky shore, if you could have gotten the "Nelson" or any other tug to get you away from there?

A. No, I do not suppose I would.

Q. Have you used a patent anchor, Captain?

A. No, I never used it.

Q. Do you know whether they work as well on rocky bottom as the old anchor?

A. No, I do not; I never had any experience with these patent anchors.

Q. Well, your company use a good many tugs and you are towing in all kinds of weather?

A. Yes.

(Testimony of Captain William Gove.)

Q. You are not equipped with patent anchors, are you? A. No.

Redirect Examination.

Q. (Mr. KING.) Your experience in towing vessels, about what proportion are equipped with patent anchors?

A. Well, there is quite a number I notice. I notice all the steamers use them, nearly all the steamers use them. They claim they are better than the others. I never had any experience with them.

Q. They cost more than the others, don't they?

A. I do not know.

Q. Now, if you were lying with a thousand ton ship to the east of Waddah island, under the circumstances stated here, while you would not have anchored there for choice or care for that as a place of anchorage, the question to you as commander of that vessel was whether or not you would take assistance in the way of towage from another vessel without knowing in any respect what that towage would cost?

Mr. KERR.—I object as incompetent; that is the question for the Court.

A. I certainly should.

Q. If you believed that your vessel in that position and your knowledge of the chances you were taking in anchoring there for that night, or debating between that and the question of towage, would the fact that instead of a towage charge you would have to pay what is commonly known as a salvage charge,

(Testimony of Captain William Gove.)

have any influence on you in coming to a decision whether you would anchor or not?

Mr. KERR.—I make the same objection.

A. Yes, sir.

Q. What influence would it have?

A. I would have anchored before I would have paid salvage. I would assume the chances.

Q. You believe that you would be doing your full duty to the owners of the vessel?

Mr. KERR.—I make the same objection.

A. Yes, sir.

Q. (Mr. KERR.) You would do that whether the barometer was falling rapidly or whether it was not, or whether the weather indications were that a storm was impending, you would simply risk your whole vessel and the loss of her including your cargo?

A. If the wind came from the southwest—

Q. Never mind where the wind came from.

A. I should have taken all these things into consideration.

Q. But you would have anchored rather than to have paid any salvage. You would just anchor your vessel rather than do that, whether you lost her or not?

A. Before I would have paid salvage, being in that position I would have anchored my vessel.

Q. You would anchor, no difference what the storm indications were, and no difference whether you had been flying distress signals all day or not?

Mr. KING.—I object; there were no such conditions existing.

(Testimony of Captain William Gove.)

A. There is liable to be a tug any moment.

Q. Suppose there had not been, what would you have done until the next morning?

A. Someone else was liable to be there, if I was not.

Q. In other words, you would not accept a tow where you thought there might be a claim for salvage, you would go to anchor anywhere?

A. No, I would have tried to make a dicker with the captain?

Q. Suppose he would not make a dicker, just as you are not allowed by your company to dicker with anybody?

Mr. KING.—I object, there is no such testimony in this case.

A. That is true.

Q. Your company will not allow you, with a vessel in distress, to make a contract for towage?

A. No. I do not know about that. We would make a trade with anybody. I have done it several times.

Q. Where have you for the Puget Sound Tugboat Company?

A. They never made any objections to our making a trade. They never said anything to me about it.

(Testimony of witness closed.)

Hearing adjourned.

(Testimony of Captain William Gove.)

Seattle, Washington, November 18, 1908.

Continuation of proceedings pursuant to agreement.

Present: Mr. KERR, for the Libelant.

Mr. CLISE, for the Claimant.

Captain WILLIAM GOVE, recalled on behalf of the claimant, testified as follows:

Q. (Mr. CLISE.) Captain, in whose employ are you at the present time?

A. Puget Sound Tugboat Company.

Q. Are you master of any vessel?

A. Yes, sir.

Q. What vessel?

A. The tug "Wanderer."

Q. What business is that tug engaged in?

A. In the towing business.

Q. Where?

A. Well, all the way from Olympia to the sea and British ports.

Q. Here on Puget Sound? A. Yes, sir.

Q. Have you been master of any tugboats on the Sound? A. Yes, sir.

Q. What?

A. The "Tyee," the "Pioneer," the "Tacoma," the "Holyoke," and others that are now broken up and burned.

Q. During what period of time does this cover?

A. Well, I started in towboating in 1864.

Q. Are you acquainted with what is a reasonable charge for towage service on Puget Sound?

A. Yes, sir.

(Testimony of Captain William Gove.)

Q. Captain, I want you to state what would be a reasonable charge for towing a four-masted schooner from off Waaddah island, if you picked her up about four o'clock in the afternoon, with a light northeast wind blowing, the vessel being disabled, in that she had lost her rudder, and you towed her during the course of the night, the wind increasing to a maximum of fifty miles or thereabouts; the wind shifting to the southwest; and during the course of the night your hawser was broken three times; the wind towards morning of the next day decreasing, and landing this vessel in Port Angeles about noon of the second day?

Mr. KERR.—I object as not a proper hypothetical question calling for a conclusion of the witness upon a matter that is to be determined by the Court upon all the facts, and as irrelevant and immaterial.

A. You want to know what would be a reasonable price for that work?

Q. Yes, sir. A. To Port Angeles?

Q. Yes, sir.

A. Well, I should think a thousand or fifteen hundred dollars would be a pretty good, fair price.

Q. Now, if you had continued towing this vessel, under these same conditions to Port Townsend, what additional compensation, if any, would have been reasonable for that service?

Mr. KERR.—I object as immaterial and irrelevant.

A. Well, three or four hundred dollars additional would be sufficient.

(Testimony of Captain William Gove.)

Mr. KERR.—I move to strike the answer of the witness on the ground that the question is not a proper hypothetical question; and, on the further ground that the answer is incompetent, and the witness is incompetent; and that the question propounded to the witness is the ultimate question to be determined by the Court from all the facts.

(No cross-examination.)

(Testimony of witness closed.)

Hearing adjourned.

Seattle, Washington, January 6, 1909.

Continuation of proceedings pursuant to agreement.

Present: Mr. KERR, for the Libelant.

Mr. CLISE and Mr. KING, for the Claimant.

Mr. KERR.—I desire at this time to offer further testimony on behalf of the libelant.

Mr. KING.—We object to the offer of any testimony as not proper at this time.

[**Testimony of L. H. Gray, for Libelant.**]

Mr. L. H. GRAY, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KERR.) State your full name, Mr. Gray? A. Louis H. Gray.

Q. You reside in Seattle? A. In Seattle.

Q. What is your business?

A. Steamship agents and ship brokers.

Q. How long have you been engaged in that business? A. About almost eleven years.

(Testimony of L. H. Gray.)

Q. In Seattle? A. In Seattle.

Q. Do you know the steam schooner "Charles Nelson"?

A. Yes, sir.

Q. How long have you known that vessel?

A. I have noticed her on the coast for seven or eight years.

Q. What has been your relation with her?

A. At present we are the agents for the vessel.

Q. How long have you acted in that capacity?

A. Seven or eight months.

Q. Were you acquainted with her prior to that time?

A. Yes, sir.

Q. Been aboard of her frequently?

A. Yes, now and then.

Q. Did you ever have her listed with you for sale?

A. Yes, we had her listed for sale last summer.

Q. What effort did you make to ascertain, if any, her value in San Francisco, her home port, or her value generally?

A. Our office compared her with other steam schooners on the coast and we got information from various owners and they said our price—

Mr. CLISE.—I object to that.

Q. No matter what they said.

A. We found a fair value of the vessel was seventy-five thousand dollars, comparing her with others.

Mr. KING.—I move to strike the answer on the ground that it is hearsay and not direct testimony; and the witness is not qualified as an expert.

Q. Are you or not acquainted with the value of the vessels of the class to which she belongs on this

(Testimony of L. H. Gray.)

coast, either here or in San Francisco, or at both places, in the latter part of 1907, during the month of November?

Mr. KING.—I object to that on the ground that the class to which the vessel belongs is incompetent, irrelevant and immaterial; it must be the value of this vessel itself.

Q. The market value of vessels of that character?

Mr. KING.—I make the same objection.

A. After careful investigation I believe that the vessel is worth about seventy-five thousand dollars, and was worth that.

Mr. CLISE.—I move to strike for the reasons stated in our objection.

Q. Preliminary to that, the question is whether you were on November 27th last acquainted with the market value of the "Charles Nelson," and of vessels of that class and character?

Mr. KING.—I object; any answer that embraces vessels of similar character or class is immaterial; it should be confined to the value of the "Charles Nelson."

Q. Do you know what that vessel, if offered in the open market for sale by the owners, without any compulsion on their part, would have brought in the open market?

A. Mr. Kerr, the question is not quite plain to me; I want to answer right.

Q. The preliminary question, preliminary to your answer as to what her value is, is whether you are able to state what the market value of that vessel was

(Testimony of L. H. Gray.)

in November, 1907. That is, what amount of money she would have brought in the open market, if she had been offered for sale?

A. Yes, I feel I am competent to judge.

Q. What, in your judgment, was her market value on the 27th of November, 1907?

Mr. KING.—I object on the ground that the witness has not shown himself competent to answer.

A. I believe the vessel was worth about seventy-five thousand dollars.

Mr. KING.—I move to strike the answer; he does not state the value of the vessel, but simply the witness' opinion as to the value of the vessel; he was asked what she would fetch in the open market.

Cross-examination.

Q. (Mr. KING.) You say, Mr. Gray, that you now are connected with the "Charles Nelson"?

A. We act as agents for the "Charles Nelson" company.

Q. When did you last see the "Charles Nelson"?

A. On her last trip in Seattle, which I should judge was about thirty or perhaps forty days ago.

Q. Can you tell how near November 19th, 1907, you saw her? A. No, sir.

Q. You testified that in your opinion she was worth at that time in the open market seventy-five thousand dollars, is that right?

A. I believe her to be worth that, sir.

Q. Did you make any examination of her on or about November, 1907? A. No, sir.

(Testimony of L. H. Gray.)

Q. Did not know the condition of her decks at that time? A. Not familiar.

Q. And did you know the condition of her engines at that time? A. No, sir.

Q. Is she coppered or painted?

A. At the present writing I could not say.

Q. You could not say whether she was in November, 1907, could you?

A. No, sir, I will admit that.

Q. So that if she was coppered you had never examined her sheathing. How many hatches has she?

A. I am not familiar just now; but the full records of the vessel were given to us by the owner.

Q. And you base your statement of seventy-five thousand dollars simply on what the owner told you the vessel was and not from your own physical inspection to ascertain her value?

A. No, sir, you are wrong in that matter.

Q. What do you base it on?

A. I base it on comparing her with the value of other vessels; what vessels sell for as a rule.

Q. If you did not know anything about her how could you compare her with other vessels except as to what you were told about her?

A. That is the way we get our information, from asking other owners what vessels are worth.

Q. That is what you base your contention on?

A. Yes, sir.

Q. And not from a physical inspection of the vessel? A. No, sir.

(Testimony of witness closed.)

[**Testimony of Captain Charles C. Manter, for Libelant.**]

Captain CHAS. C. MANTER, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KERR.) Where do you reside?

A. In Seattle.

Q. How long have you resided in this city?

A. About eight years.

Q. What is your occupation?

A. Mariner.

Q. How long have you been a master mariner?

A. I have been a master mariner for about twelve years.

Q. And what proportion of the time have you been engaged on Puget Sound waters and the State of Washington?

A. Well, I have been master for twelve years, but I have been on Puget Sound for about twenty-one years.

Q. What kind of vessels have you navigated for the last number of years? A. Tugboats.

Q. Where?

A. Puget Sound and Pacific Ocean.

Q. In the employ of what company?

A. Puget Sound Tugboat Company.

Q. You have been handling vessels in and out of the straits during all that time? A. I have.

Q. Are you acquainted Captain Manter with the four-masted schooner "Willis A. Holden"?

A. I am.

Q. Are you acquainted with the steam schooner "Charles Nelson"?

A. Yes, sir.

(Testimony of Captain Charles C. Manter.)

Q. How long have you known these vessels?

A. I have known them ever since they have been around Puget Sound; I could not say how old they were.

Q. In your experience as a tug-master, have you handled vessels that were rudderless and in distress?

A. Never did—well, I have, in distress, but never rudderless.

Q. Are you acquainted with the various anchorages and mooring grounds in the straits of San Juan de Fuca?

A. Well, I am pretty well posted on most of the anchorages around the beach.

Q. Captain, I wish you would examine this Respondent's Exhibit 1, it being a chart of the Straits of San Juan de Fuca, and I call your attention to the location of Waaddah Island on this chart. Now, Captain, suppose that on or about the 12th of December, 1907, the four-masted schooner "Willis A. Holden" was in the straits, without rudder, her rudder having been carried away; having a list of about four degrees to port; loaded with a cargo of about 1,300,000 feet of lumber, and was about three-quarters of a mile offshore near Waaddah Island, so that the outer end of Waaddah Island bore to the west at that time. And, suppose that during the night of the 12th the wind velocity and direction was as follows: Suppose the wind at 4 P. M. of the afternoon of the 12th of December was from the east and shifted to the northeast at 11 P. M. and was in the northwest at midnight; the barometer at 5 P. M. in-

(Testimony of Captain Charles C. Manter.)

dicating 29.40; and suppose that during and after midnight of the 13th and from after midnight of the 12th, that the wind attained a velocity of 52 miles from the west at 4:15 A. M. of the night of the 13th; and that during the 13th the prevailing direction of the wind was west, being steady except at midnight to 2 A. M. The barometer at 5 A. M. of the 13th indicating 29.40 again. What would you say as to whether the position occupied by the "Holden" as indicated by the letter B, would be a safe anchorage for that vessel during the night of the 13th?

Mr. KING.—I object on the ground that this does not show the wind or weather conditions prevailing at the point B during the night of the 12th and 13th.

Mr. KERR.—I will follow that up.

A. Well, I should say it was not a safe position to anchor with these prevailing winds.

Q. Assuming that the wind directions and velocity of the wind that I have given you are taken from the report of the United States Weather Bureau at Tatoosh Island, I will ask you if these velocities, considering the direction of the wind, would have been at Waaddah Island the same?

A. They are not likely to be the same winds at Waaddah Island at that time.

Q. Well, if the extreme gale that blew that night, 52 miles an hour, came out of the west, what would you say?

A. It would be stronger at Waaddah Island.

Q. Stronger than at Tattooosh? A. Yes, sir.

(Testimony of Captain Charles C. Manter.)

Q. Would it be good seamanship for the captain of a vessel like the "Holden," considering her size and her value and the value of the cargo she had aboard; the fact that she was absolutely rudderless and had a heavy list to port, having justified him in attempting an anchorage of that vessel off Waaddah Island in the position indicated by B?

Mr. KING.—I object; there is nothing here to show that the witness knew the conditions prevailing at Waaddah Island at that time?

A. Well, I should say a vessel could anchor there; I have seen vessels anchored there with a southerly wind. It is pretty fair holding ground.

Q. Would it have been good seamanship and a proper thing for the master of a vessel in that condition at that time, to have refused assistance and undertaken to have anchored his vessel there, against such conditions as prevailed as shown by this weather report?

A. I should say that he would not have shown good seamanship.

Q. I want to call your attention, captain, to Respondent's Exhibit No. 2, offered in this case, which is a diagram drawn by one of the witnesses, Captain Lauer, who testified for the respondent. I call your attention to the direction of the wind as indicated on this exhibit. Captain Lauer testified that at a given time, shortly after the hawser had been broken and again placed on board and fastened to the "Holden," that the vessel headed in the direction in-

(Testimony of Captain Charles C. Manter.)

indicated here by position No. 1, the wind coming from the southwest; and that thereafter the captain of the "Nelson" had brought the vessels around into the position marked No. 2, or into the wind. The captain also then testified that for some reason peculiar to this vessel, as I understood it, the "Holden," when the vessel came into the wind, the "Holden" went off to the position or in the direction of the position between positions 2 and 3; and that the captain of the "Nelson" then put his vessel about and across the bow of the "Holden," and assumed practically position No. 3. And the contention of Captain Lauer was that the "Nelson" had, under the circumstances, not been properly maneuvered or handled. What would you say?

Mr. KING.—I object, on the ground that all the conditions at the time are not fully before the witness, and cannot be.

Q. I will ask you in the same connection, before you answer the question, to assume that the "Holden" was without any rudder; she had a list that I have indicated heretofore, and that the night was dark and stormy, but the wind was gusty, coming in during the night it had practically shifted round the compass.

Mr. KING.—I renew my last objection.

A. As soon as the captain of the "Nelson" started pulling on that schooner—she had no rudder, and listed, it was impossible for her to go straight. The schooner could not go straight; the

(Testimony of Captain Charles C. Manter.)

schooner had swung around and he had to cross her bow to straighten him up again.

Q. Suppose, also, captain, during that entire night, on account of the list and on account of the lack of any rudder, in attempting to maneuver this vessel, he spent practically fourteen hours in the straits, in endeavoring to keep her offshore and take care of her, and she slued back and forth on the hawser, so that the hawser parted three times during the night, would that experience indicate to you whether or not, even if these maneuvers were made, it was a proper or improper manner?

A. Well, it is hard to meet these turns so that he would not carry away his hawser. Of course a steam schooner being so heavy and in the night-time he could not tell when she was bringing up on a sea that the hawser carried away. I do not think the captain could, because the captain of the schooner could not steer the schooner. If he could have steered the schooner she would not have carried away the hawser; that is the chances are he would not.

Cross-examination.

Q. (Mr. KING.) Now, captain, assume the "Holden" to be in the condition that you have testified, rudderless, with a deck-load and list to port, and that at four o'clock in the afternoon of December 12 she was in the position you have indicated with reference to Waaddah Island. That the weather was clear, with a slight haze over the land; the vessel about three-quarters of a mile from the land;

(Testimony of Captain Charles C. Manter.)

soundings taken showing forty fathoms of water with a moderate northeast wind, the "Holden" being provided with two patent anchors and one smaller anchor, and 180 fathoms of cable; the wind about east-northeast. Would you have considered it bad seamanship, under these circumstances, to have anchored for the night where she was at Waaddah Island?

A. Well, if he had no other hopes it was all right for him to anchor, because he could do no different.

Q. Well, would you, as a master mariner in command of a vessel similar to the "Holden," having in mind your duty to your owners, have anchored, if you were in that situation or accept a tow under a salvage proposition? A. I would have taken the tow.

Q. Under a salvage proposition?

A. I should have taken the tow under any conditions.

Q. No matter how much salvage?

A. I should have.

Q. You think you were in imminent danger during these weather conditions?

A. I do not. Not at all times.

Q. I am speaking now. We have only got to get at what the captain saw at four o'clock. He could not foresee the weather any more than you could. What would you have done then?

A. I should have taken a tow.

Q. Notwithstanding you did not consider her in any immediate danger at that time with your holding gear?

(Testimony of Captain Charles C. Manter.)

A. It all depends on the weather at that time.

Q. Well, the weather at that time was with an east-northeast wind, light to moderate.

A. She was lying all right.

Q. What would be the effect if she was anchored there with the holding-gear that I have enumerated, if there came up a southwest gale in the night?

A. She would have been in a bad position.

Q. Why?

A. On account of the sea and the tide.

Q. Would she if at Waaddah Island under the lee?

A. She would not; it gives you no protection with a southwest wind.

Q. I do not mean under the lee, but would not be so rough; Waaddah Island is the weather shore?

A. No, sir.

Q. I wish you would show me on that chart how you make that out?

A. Here is a southwest wind; the sea heaves in here something terrific with a southwest wind and ebb tide.

Q. How long will an ebb tide be?

A. It will run all the way from four to eight hours.

Q. What is the contour of the ground here, that is the mainland from Cape Flattery?

A. Right through here there is a cut; the wind comes out there with terrific force with a southwest wind. You come in by the cape with a light southerly wind; when we open out by Neah Bay it blows

(Testimony of Captain Charles C. Manter.)

terrific right there, in the summer time as well as in the winter.

Q. You mean to say the position where she was there would be more dangerous than if she was on the Vancouver shore? A. No, she would not.

Q. It would be safer?

A. It would be safer than Vancouver shore, because she had all this distance to drift.

Q. That is where with a southwest gale such as described on the American shore is southeast there?

A. This would have been the safest shore.

Q. You were speaking with reference to this exhibit 2, captain, and, as I understood you, the "Holden" being rudderless, would have to swing or yaw from one side to the other? A. Yes, sir.

Q. Could not control her? A. No, sir.

Q. And that made this position as indicated in here across her bow in order to check her swaying; is that right?

A. To keep head of the schooner.

Q. And you considered that was good seamanship under the circumstances, she being rudderless?

A. He could not do different.

Q. Well, now, if he was a master mariner, as he testifies that he is, that is the captain of the "Nelson," he would have known of that when he took her in tow at Waaddah Island, would he not, that she was rudderless and that he would have some such similar conditions to meet?

(Testimony of Captain Charles C. Manter.)

A. Of course he knew as soon as he hooked on to her, he probably did. He might have not been used to the tugboat business.

Q. Suppose he testified that he was used to the tugboat business?

A. He ought to have known.

Redirect Examination.

Q. (Mr. KERR.) In your experience going in and out of the straits, whether a position of a boat at point B there near Waaddah Island, the middle of December, the barometer being down to 29.40, the weather of the 12th, the day preceding having been stormy and blustery, the wind shifting, having attained at ten a velocity of fifty miles an hour, whether these weather conditions the time of year being taken into consideration and all, would affect the mind of the master who was familiar with these waters, as to whether he would or would not take a tow when he had his signals of distress up and flying all day?

A. He would have taken a tow anyhow.

Q. Is the month of December in the straits a stormy or windy or windier month than others in the year? A. It is one of the worst that we have.

Q. I will ask you the question: Suppose that you had gone to the "Holden" as a tugboat master and found her in the condition that we have described to you, rudderless, flying signals of distress, loaded with lumber, having a list to port of about three or four degrees, close in to that shore and within three-quarters of a mile, and communicated with the cap-

(Testimony of Captain Charles C. Manter.)

tain of the "Holden," and he had said to you that he wanted you to tow him, but wanted to make a towage contract, would or would you not have made a towage contract with him?

Mr. KING.—I object as not a proper hypothetical question and not in accordance with the facts as testified to. A. I should not.

Q. You would have let the respective owners settle that question among themselves?

Mr. KING.—I renew my last objection.

A. Yes, sir.

Q. Suppose that Captain Ranselius of the "Nelson" had informed Captain Lauer of the "Holden," when he spoke to him about making a contract of towage, that he would give him relief, but the owners could settle the amount of the matter of the terms, he would go about his business; would that have been a thing that the tugboat captain would ordinarily have done?

Mr. KING.—I object; the question is not in accordance with the facts as testified to.

A. It would have been the proper thing for him to have done.

(Testimony of witness closed.)

[Testimony of Captain L. B. Lovejoy, for Libelant.]

Captain L. B. LOVEJOY, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KERR.) Where do you reside?

A. In Seattle.

(Testimony of Captain L. B. Lovejoy.)

Q. What is your occupation?

A. Tugboat master.

Q. How long have you been a master mariner?

A. Ten years and a half.

Q. How long have you been handling tugboats on Puget Sound? A. Ten years and a half.

Q. Where?

A. In the waters of the straits and all over Puget Sound.

Q. Towing vessels in and out of the Straits of San Juan de Fuca? A. Yes, sir.

Q. Familiar with the waters of the Straits and San Juan de Fuca? A. Yes, sir.

Q. With what company are you?

A. Puget Sound Tugboat Company.

Q. How long have you been with them?

A. Eight years.

Q. Engaged in these same waters?

A. Yes, sir.

Q. Captain, I want to call your attention to Respondent's Exhibit 1, being a chart of the Straits of San Juan de Fuca. I am going to ask you a hypothetical question, as follows: Suppose that on the evening of the 12th of December, 1907, at about half-past four o'clock, the four-masted schooner "Willis A. Holden" was found in a position about three-quarters of a mile offshore, the outer end of Waad-dah Island bearing to the west, in about thirty-five or forty fathoms of water, flying signals of distress, having a heavy list to port. That during the day

(Testimony of Captain L. B. Lovejoy.)

she had drifted around in the straits and had gotten back to this position, by having drifted back here, stern foremost, where she was found. Suppose she was equipped with two patent anchors weighing about four thousand pounds each, and had about 160 fathoms of chain for each. Supposing that during the night the wind shifted from an easterly direction around to the west or southwest and back to the west, so that in the early part of the morning, or about midnight of the 12th and 13th, the wind attained a velocity of fifty miles an hour at Tatoosh Island, coming from the west. I want to ask you whether, in your judgment, considering the conditions of the vessel and of the matters we have called your attention to, it would have been good seamanship, safe or prudent, for the master of the "Holden," after having brought to his aid the schooner "Nelson" by his signals of distress, to have refused assistance and undertaken to have anchored his vessel with her cargo, that time of the year, the wind having the night before attained a velocity of fifty miles an hour, the wind having shifted both days almost the circuit of the compass; the barometer indicated both days about 29.40.

Mr. KING.—I object to the question, on the ground that it does not contain all the conditions existing at the time. That it includes statements and conditions which did not exist at the time; that it contains misstatements of the conditions obtaining at the time. I also object because the witness is not

(Testimony of Captain L. B. Lovejoy.)

qualified by showing that he is in any way acquainted with either of the vessels involved in this controversy or having ever set eyes on them.

A. I think it would be good seamanship to secure the services of a boat to take him to a safe anchorage.

Q. Are you acquainted with the steam schooner "Charles Nelson," and the four-masted schooner "Willis A. Holden"?

A. I have had the "Holden" on numerous occasions. I have never been aboard of the "Charles Nelson," but I have passed her many times going to and fro.

Q. Considering the time of year and the fact that the weather conditions were such as I have indicated to you, would it have been good seamanship to have refused assistance after it had come to them by flying signals of distress, and to have anchored that vessel with 1,300,000 feet of lumber aboard of her, a vessel worth thirty or forty thousand dollars, and the cargo worth twelve or fifteen thousand dollars, and remained there over night?

Mr. KING.—I object; it is not a correct statement of the conditions at the time, and embraces facts that are not cognizant with what existed at the time, and does not contain fully all the conditions existing at that time.

A. No, I do not think so.

Q. Have you handled vessels in distress, as a master mariner since you have been connected with the tugboat company?

A. Yes.

(Testimony of Captain L. B. Lovejoy.)

Q. Suppose you had been the captain of the "Charles Nelson," or with your own tug, had been called there under the circumstances I have indicated to you, and suppose the captain of the "Holden" had said he wanted to negotiate with you an absolute towage contract, would you or would you not have made such a contract?

Mr. KING.—I object. No such conditions have been testified to.

Q. What would you have done in the matter?

Mr. KING.—I object as incompetent, irrelevant and immaterial.

Mr. KERR.—I will withdraw the question.

Q. Assuming that the captain of the "Nelson" went to the rescue of the "Holden" on or about half-past four o'clock in the afternoon of the 12th of December, and found her in the condition indicated to you by the preceding questions; and supposing that after he came up to her the conversation ensued between the master of the "Holden" and the master of the "Nelson" in which the master of the "Holden" asked the master of the "Nelson" to give him a towage contract; and suppose that the master of the "Nelson" had said to him that he would not do so; that he would render him assistance if he needed it, otherwise he would go on about his business. I will ask you to state whether or not that is what tugboat men generally would have done under the same circumstances?

Mr. KING.—I object on the ground, first because it is not a correct statement of the facts existing at

(Testimony of Captain L. B. Lovejoy.)

the time; second, it is incompetent, irrelevant and immaterial, the question at issue being what contract was made between the captain of the "Nelson" and the captain of the "Holden" and not what it would have been most prudent agreement to make under the circumstances? A. It was.

Q. Now, Captain, I want to call your attention to Respondent's Exhibit 2, which is a diagram drawn by Captain Lauer, referred to in his testimony, for the purpose of showing in support of his testimony that the captain of the "Nelson" did not properly maneuver the vessel in handling the "Holden" while he had her in tow in the straits. I will ask you to assume that the "Holden" had a list of about four degrees to port and she was without a rudder and she was loaded with cargo of 1,300,000 feet of lumber, and while they were in the straits the cable parted three different times. That immediately after it had broken the second or third time—first or second time, they had succeeded in passing it aboard the "Holden" again and that the vessels were in the position as shown in position No. 1, A representing the "Holden" and B representing the "Nelson," the wind being indicated by the arrow, from the southwest. That on account of the slueing of the "Holden" the vessels got into the position indicated by position No. 2, or headed up into the wind. And the captain also testified that because of some peculiar thing in the handling of this vessel she would shift off from the position in the wind in the direction indicated by position No. 3, and that having to

(Testimony of Captain L. B. Lovejoy.)

her into position No. 2, and the vessel having slued off in the position indicated by No. 3, the captain of the "Nelson" then came across her bow and took position No. 3. I will ask you to state, everything considered, whether there was anything improper in that maneuver?

Mr. KING.—I object on the ground that the question does not fully state the facts that existed at the time and testified to by the witnesses; that it states facts that did not exist at the time and were not testified to by any witnesses; and that it misrepresents the facts existing at the time and testified to by the witnesses.

A. I think there was nothing improper in the maneuver of the steamer.

Q. Have you ever had any experience in handling vessels that had lost their rudders or steering gear?

A. Yes, sir.

Q. Are there any rules of navigation or of seamanship that you can apply to the handling of a vessel of that kind in the straits or elsewhere, where the wind is blowing in gusts, changing its direction from time to time?

Mr. KING.—I object as incompetent, irrelevant and immaterial.

A. No, sir.

No cross-examination.

(Testimony of witness closed.)

Hearing adjourned.

(Testimony of Frank Walker.)

Seattle, Washington, 5 P. M., January 13, 1909.

Continuation of proceedings pursuant to agreement.

Present: Mr. KERR, for the Libelant.

Mr. KING, for the Respondent.

[Testimony of Frank Walker, for Respondent.]

Mr. FRANK WALKER, recalled on behalf of respondent, testified:

Q. (Mr. KING.) You are the Frank Walker who in connection with Captain S. B. Gibbs made a survey of the steamer "Willis A. Holden," the report of which is already on file as an exhibit in this case, are you? A. Yes, sir.

Q. In the report that is on file as an exhibit, on page 3, you state: "Figure head torn adrift, stem and bow planking chafed and bruised, alleged by 'Chas. Nelson' to-line." What did you mean when you said "alleged by 'Chas. Nelson' to-line"?

A. Well, when I asked how this damage was done in making the survey, the officers of the vessel stated it was done by the "Charles Nelson's" tow-line—alleged by them. I was not there to see it.

Mr. KERR.—I object to the answer of the witness and move to strike it out as hearsay.

Q. You found that damage done to the figurehead of the vessel?

A. I found that damage done to the figurehead of the vessel, yes.

Q. "Mouldings over mizzen chain plates port side badly cut into; alleged by 'Chas. Nelson' in getting

(Testimony of Frank Walker.)

hawser aboard." You have no knowledge of that except what you were told, the same as the other?

A. O, no.

Q. Except that the mouldings on the port side were badly cut into? A. Yes, sir.

Q. "Flying jibstay carried away and rendered useless, outer bobstay chain carried away and partly lost; 2nd, bobstay band on jibboom broken clear off; 3rd, bobstay turnbuckle carried away and lost." You found that damage done to the bow of the vessel? A. To the headgear.

Q. On page 4: "All back ropes badly chafed on the service, alleged by 'Chas. Nelson' tow-line." You have no knowledge of how that came except what you were told? A. That is all.

Q. Please explain what you mean by "All back ropes badly chafed on the service."

A. Well, all of these back ropes from the jibboom and mainmast, they were all wire, they are wire back ropes, you know, and they are covered with a service; there is marlin, they are bent with marlin right along, and that was all cut off and had to be reserved.

Q. What I want to know is what are the back ropes?

A. Well, really they are sets of back ropes, back rope sets from the jibboom to the bow of the vessel—there are so many back ropes; there are mainmast back ropes and jib back ropes and guy back ropes and—

Q. "The foretopmast started at fid and pulled down on same, evidently by the extra strain put on

(Testimony of Frank Walker.)

headgear when same was carried away as above mentioned.”

A. You see, the stays come down from the topmast down to the jibboom; there is the royal sett and the topmost sett, and when the bowsprit carried away, when the headgear carried away, it pulled the mast down.

Q. From the same page: “Galley and cabin smoke stacks carried away; alleged by ‘Chas. Nelson’ tow-line and handling jury-rudders, respectively.” As to how it was done you have no actual knowledge, have you?

A. No. That is a misprint there; it is the donkey stack instead of the galley stack.

Q. Where is the donkey stack?

A. Forward, it stands by the forecastle head.

Q. This damage was all done to the forward part of the vessel, was it?

A. Forward part of the vessel, with the exception of the mouldings aft where the collision occurred, where the stem of the other vessel came in and cut through the mouldings.

Q. Do you know what was the money value of the damage done to the forward part of the vessel?

Mr. KERR.—Objected to as incompetent, irrelevant and immaterial.

A. Yes, I know what it is.

Q. How much is it?

Mr. KERR.—Objected to as incompetent, irrelevant and immaterial.

A. Approximately three hundred dollars.

(Testimony of Frank Walker.)

Q. That is limited, is it, to the damage done to the bow of the vessel?

A. That is the damage done to the bow of the vessel and the graven piece in the rail and the mouldings on the after side.

(No cross-examination; testimony of witness closed.)

Testimony closed.

[Commissioner's Certificate to Testimony and Proceedings, etc.]

United States of America,
Western District of Washington,
Northern Division,—ss.

I, C. A. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said District, do hereby certify that:

The foregoing transcript of testimony and proceedings in the foregoing entitled cause, from page 1 to page 205, inclusive, was taken before me and under by direction, at the times therein stated.

The several witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth.

The exhibits offered by the claimant, to wit: "1," "2" and "3," are filed and returned herewith.

Proctors for the respective parties stipulated waiving the signature of the several witnesses to their testimony.

I further certify that I am not of counsel nor in any way interested in the result of said suit.

Witness my hand and official seal this 11th day of January, 1909.

A. C. BOWMAN,
U. S. Commissioner.

[Endorsed]: Testimony, Filed in the U. S. District Court, Western Dist. of Washington. Jan. 27, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber Consisting of About 1,500,000 Feet Board Measure, of the Value of About \$15,000,

Respondent.

Answer to Amended Libel.

To the Honorable C. H. HANFORD, Judge of Said Court:

Now comes the Globe Navigation Company, Limited, of Washington, a corporation, duly organized and existing under the laws of the State of Washington, and says that it is the lawful bailee of the

schooner, "Willis A. Holden," her tackle, apparel, furniture, and cargo on board December 12, 1907, and that it claims said schooner, her tackle, apparel and furniture, and said cargo for the respective owners thereof, and claims the freight money upon said cargo for itself, and now comes into this court and intervenes and defends against the amended libel of the Charles Nelson Company, a corporation, filed herein for and in behalf of all persons and parties interested in said schooner, "Willis A. Holden" and her said cargo and freight money, as aforesaid, and for answer to said amended libel, says:

I.

That the Globe Navigation Company, of Newark, New Jersey, a corporation, organized and existing under the laws of New Jersey, is the sole, true and bona fide owner of the schooner, "Willis A. Holde," and that no other person or corporation is the owner thereof, and that this claimant is the lessee and operator of said schooner, and is entitled to the freight money earned upon the voyage hereinafter described.

II.

And said claimant further says that the consignee of the cargo of lumber on board said schooner, "Willis A. Holden," at the time mentioned in said amended libel is Bowring and Company of Shanghai, China, and that said claimant is informed and verily believes that certain other persons have some interest in said cargo, but that the names of said parties and the amount of their interest in said cargo is not at present known to this answering claimant,

but that it claims said cargo and intervenes to defend said amended libel for and in behalf of any and all said parties, and that the cargo of said schooner at the time mentioned in said amended libel. to wit, December 12th, and 13th, 1907, consisted of lumber, and

III.

Said answering claimant says that it is true that said four master schooner "Willis A. Holden," on or about November 27, 1907, departed from Willapa Harbor in the State of Washington on a voyage to Shanghai, China, laden with a cargo of lumber consisting of 1,294,000 feet board measure, valued per manifest at fifteen thousand nine hundred fifty (\$15,950.00) dollars and admits that the contract of affreightment on said cargo of lumber calls for the payment of freight thereon amounting twenty-three hundred and eighty-eight pounds, one pence, sterling (£ 2388—1 d), when the said cargo should be delivered at Shanghai, China, and said answering claimant admits, that it is true that said schooner on said voyage encountered storms at sea and became disabled by the loss of her rudder, and also that it is true that said schooner sailed in the waters of the Pacific Ocean until December 12, 1907, when she was in the waters of the Straits of San Juan de Fuca inside Cape Flattery, but says that it is not true that she was near the shore at any time or that her jury-rudder had been broken, and that it is not true that she was wholly disabled and unmanageable and that it is not true that she was in any proximity to any rocks or reefs whatsoever; and it is not true that she

was in great danger, or in any danger of being lost or cast away either with or without her cargo and freight money; and that it is not true that the service rendered said schooner by the libeler saved or rescued her or her cargo or the said freight money from any loss or danger whatsoever; and that it is not true, that at 4:30 o'clock P. M. or at any time prior to a short time before midnight on December 12, 1907, that a strong gale of wind or a gale of any kind was blowing in the Straits of San Juan de Fuca, and denies that said Straits were at said time rough and that a high sea was running therein; and denies that said schooner was disabled and was unable to extricate herself from her dangerous position; and denies that she was in any danger whatsoever. Said claimant admits, that at said same time, to wit, 4:30 o'clock P. M. December 12, 1907, said schooner was flying a signal calling for assistance.

IV.

This answering claimant says, that it has no knowledge whatever as to the burden of the steam schooner, "Charles Nelson" or as to whether or not the libelant was or is the owner thereof, and demands that said libelant be put to strict proof in regard thereto. This claimant admits that said "Charles Nelson" was, as stated in said libel inbound to Seattle.

V.

This answering claimant admits that in response to signals from said schooner, "Willis A. Holden," the said "Charles Nelson" came up to said schooner and passed a hawser to said schooner and towed said

schooner to an anchorage at Port Angeles, Washington, and admits that during said towage that the hawser of said "Charles Nelson" was parted three times; but said answering claimant denies, and says it is not true that at said time said "Willis A. Holden" was disabled, otherwise than by the loss of her rudder, but had a sufficient jury rudder then rigged and in operation, and denies that said "Willis A. Holden" was unmanageable; and denies that she was in imminent peril and danger of stranding and being lost, and that she was in any peril or danger whatsoever, and denies that the passing of the hawser between the schooner and said "Charles Nelson" was attended with great difficulty and hazard, or with any difficulty or hazard whatsoever.

VI.

Said answering claimant further says, that said schooner is and was at said time owned by The Globe Navigation Company of Newark, New Jersey, but said claimant denies the value of said "Willis A. Holden" at the time mentioned in the said libel was the sum of \$70,000.00, and denies that said schooner was of any other or greater value than the sum of \$27,500; and said answering claimant says, that after said schooner, "Willis A. Holden," left Willapa Harbor, it became necessary, in order to save said "Willis A. Holden" and cargo, to jettison about 20,000 feet of the lumber constituting said cargo, and that said portion of said cargo was jettisoned prior to December 12, 1907, and that the cargo on board said schooner when she was taken in tow by said "Charles Nelson," consisted of about 1,274,000 feet

of lumber, board measure, and was of the value of about \$15,500.00, and that the freight money on said cargo from Willapa Harbor to Shanghai, China, was at the rate of thirty-seven (37) shillings and six pence (6 d) sterling per 1,000 feet, board measure.

VII.

This answering claimant says that it is not true and it denies, that the steam schooner, "Charles Nelson, is of the value of \$100,000.00 or of any other or greater sum than the value of \$50,000.00.

VIII.

This answering claimant says that it is not true and it denies that by reason of any services rendered to said schooner, "Willis A. Holden," that said "Charles Nelson" was exposed to great and imminent danger of contact and collision or that she was exposed to any danger whatsoever of contact or collision with said schooner, and denies that by reason to her close proximity to the shore and the condition of the wind and weather at the time, that said "Charles Nelson" was in great danger or in any danger of loss by reason of any service she rendered said schooner, and denies that said danger continued or was present at any time during the towage of said schooner by said "Charles Nelson" to the port of Port Angeles, and this answering claimant denies and says it is not true, that the service of the steam schooner, "Charles Nelson," saved the said "Willis A. Holden," or her cargo or her freight money, from being lost or destroyed, or that said "Charles Nelson," by reason of the service rendered to said schooner as hereafter set forth, rescued said schooner

or her cargo or freight money from any position of danger whatsoever; and

IX.

This answering claimant further says, that on November 27, 1907, said schooner, "Willis A. Holden," being then staunch and seaworthy in every respect, sailed from Willapa Harbor, Washington, bound to Shanghai, China, with a cargo of lumber, amounting to 1,294,000 feet, board measure, and that shortly after and about 150 miles west of the Washington Coast, said schooner encountered rough weather, whereupon, to save said ship and her cargo, it became necessary to jettison about 20,000 feet, board measure, of said cargo of lumber, of the value of about four hundred fifty dollars (\$450.00), and by reason of which her rudder and rudder-post were carried away, and that the captain and crew on said schooner thereupon rigged a jury-rudder and with the aid of said jury-rudder, sailed and navigated said schooner safely into the Straits of San Juan de Fuca, near San Juan Bay; which position she reached safely on the morning of December 12, 1907, that at said time the weather was clear and the sea calm and the wind light, blowing from about northeast, and that the captain and crew of said schooner thereupon sailed and navigated said schooner in a southerly direction across the Straits of San Juan de Fuca towards the American shore, and that between 4 and 5 o'clock P. M. of December 12, 1907, said schooner was in a sheltered position about a mile to the east of Waddah Island, in said Straits of Fuca, in about forty fathoms of water, and with good hold-

ing ground; that at said time the weather was clear and the sea calm with a light breeze blowing from the northeast. That during her sail across the Straits, said schooner being anxious to reach Seattle and repair her rudder had kept flying a signal which meant "I want assistance." That about 5 P. M. on said December 12th said steam schooner "Charles Nelson," rounded Cape Flattery and came alongside of said schooner "Willis A. Holden," the distance between the two vessels being about fifty feet, and that the captain of said "Nelson" hailed the captain of the "Holden" to know what he wanted, and that the captain of the "Holden" stated to the captain of the "Nelson" that the "Holden" was in a safe position and in no danger, with good holding ground and ample facilities for anchoring, but that he was desirous of getting to a port where he could repair his rudder, and for that reason only would like to be towed from where he then was to Port Townsend, Washington, provided the compensation for such towage would be the reasonable towage rates and not a salvage charge. That thereupon the captain of the "Holden" entered into an agreement with the captain of the "Nelson" for and in behalf of their respective ships, that the "Nelson" would tow the "Holden" to Port Townsend charging therefore a fair and reasonable rate for towage of said schooner, and that said services should be based on towage rates and should not be deemed, or considered, or paid for as a salvage charge, to all of which the captain of the "Nelson" distinctly agreed. Thereupon the captain of the "Nelson" passed a hawser to the

“Holden” and took her in tow for Port Townsend, Washington, that during said tow and owing to the negligent, unskillful and unseamanlike management and navigation of said “Nelson” by her officers and crew, and owing to the fact that the captain of said “Nelson” failed and refused to obey the directions and commands of the captain of the “Holden,” with reference to the safe method of towing said vessel, the towage line or hawser parted three times but was each time regained and passed between the two vessels without any risk of danger, whatever, to either of them and that on the 13th day of December, 1907, said “Nelson” towed said “Holden” to the Harbor of Port Angeles, Washington, and left her there at a safe anchorage, that at no time during said towage as aforesaid, was said steamer “Nelson” in any jeopardy or danger whatever, either while towing or while passing the tow-line between herself and the “Holden,” as aforesaid, but that owing to the negligence, unskilled and unseamanlike conduct of the officers and crew of said “Nelson” in the management of said ship, and owing to their failure and refusal to obey the instructions and commands of the captain of the “Holden,” in reference to said tow, said “Nelson” carried away and destroyed a large quantity of the headgear of said “Holden” to the damage of said “Holden” in the sum of three hundred (\$300.00) dollars.

X.

That the said libelant has refused to accept a fair and reasonable compensation for the services rendered said schooner “Holden,” but demands the

sum of twenty thousand (\$20,000) therefor, which sum is exorbitant and unjust and out of all proportion to the value of the services rendered, and in direct violation of the agreement between the captains of the "Holden" and the "Nelson" that said services should be paid for at reasonable towage rates; but that in order to compensate the said "Charles Nelson," her owners, officers and crew and all parties interested for the services rendered by her to the schooner "Holden," as herein set forth, as well as any loss sustained to the gear or tackle of said "Nelson" by reason of said towage, and also the costs and expenses of this action so far incurred said claimant and respondent for and in behalf of all parties in any way interested in said schooner "Willis A. Holden" and her cargo as aforesaid, has tendered and offered to pay, and hereby tenders and offers to pay the said libelants the sum of one thousand (\$1,000) dollars, and that said libelants have refused to accept said sum, and that said respondent brings into court said sum of one thousand dollars and deposits the same with the clerk of this court subject to the order of this Court in this proceeding.

XI.

This answering claimant denies and says that it is not true, that the libelants for reason of any service whatsoever rendered to the schooner "Willis A. Holden," her cargo or freight, are entitled to any salvage claim whatsoever, or to any charges or expenses attending the same and denies, that a reasonable and proper salvage for said services would amount to the sum of twenty thousand (\$20,000) dollars or to any sum whatsoever.

XII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, this answering claimant and respondent, on behalf of itself and of all other parties interested in said schooner "Willis A. Holden," her tackle, apparel, furniture and cargo, prays that the said schooner and her said cargo may be returned and restored to this claimant, the Globe Navigation Company, Limited, and that the bond given to release said schooner and her cargo from the United States Marshal in this action, together with the sureties of said bond, be released and exonerated.

That the sum of one thousand (\$1,000) dollars deposited in this court by this claimant and respondent for the services rendered said "Holden" as aforesaid, be applied and apportioned by this Court amongst the owners, officers and crew of said "Nelson," in such proportion as this Court may deem just, in full settlement and satisfaction of any and all services rendered by said "Nelson" to said "Holden" as set forth in the libel herein, together with costs and expenses of suit.

That this action be dismissed and that said respondent recover of said libellant its costs and expenses and disbursements herein incurred, and may have such other and further relief as in law and justice this Court may deem it entitled to receive.

That should this Honorable Court conclude that the services rendered by the "Nelson" to the "Holden," as aforesaid, constituted a salvage charge,

then said respondent (expressly reserving its rights to except to such ruling in whole or in part, and reserving the right of appeal therefrom) prays (a) That the Court determine what should be deducted from any such salvage allowance by reason of the negligence of said "Nelson," her officers and crew, in carrying away the headgear of said "Holden." (b) That the Court apportion any such salvage allowance between all parties interested, including the owners, officers and crew of said "Nelson," as to the Court may seem just, and (c) That the Court determine what portions of any such salvage allowance should be borne by the vessel, the cargo and the freight respectively of said schooner, "Willis A. Holden."

H. R. CLISE,
GEORGE H. KING,
Proctors for Respondent.

United States of America,
Western District of Washington,—ss.

G. F. Thorndyke, being first duly sworn, deposes and says: That he is the manager and general agent of the Globe Navigation Company, Limited, of Washington, the above-named claimant, and respondent; that he is authorized for and in behalf of said company to make this affidavit; that he has read the foregoing answer and is specially instructed as to the contents thereof, and that the facts set forth therein are true, to the best of his knowledge, information and belief.

G. F. THORNDYKE.

Subscribed and sworn to before me this 3d day of February, A. D. 1908.

H. R. CLISE,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Answer to Amended Libel. Filed in the U. S. District Court, Western Dist. of Washington. March 11, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*United States District Court, Western District of
Washington, Northern Division.*

No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

vs.

The Schooner "WILLIS A. HOLDEN," her Tackle,
etc.

Memorandum Decision on the Merits.

Filed Mar. 10, 1909.

On the 27th day of November, 1907, the four-masted schooner "Willis A. Holden," an American vessel, sailed from Willapa Harbor for Shanghai, China, with a cargo consisting of 1,294,000 ft. of lumber. On the second day at sea, she encountered a heavy storm and in buffeting with the sea, her cargo shifted, causing her to list, and in that position she was disabled by the loss of her rudder and it became necessary to jettison part of her deck load. With a make-shift for steering gear called a "jury-rudder," she was navigated into the Straits of Juan

de Fuca, where on the 12th day of December, 1907, the steam schooner "Charles Nelson" came to her relief and towed her to safe anchorage in the Harbor of Port Angeles. To recover salvage this suit was instituted in behalf of the owner, master and crew of the "Charles Nelson."

There was a succession of storms almost continually from the time the schooner became disabled until she was towed into Port Angeles Harbor. On the day and night of December 12, the weather was squally, the wind shifting from different points of the compass and varying in velocity from 29 miles to 50 miles per hour; the sea was rough and the barometer falling. When the "Charles Nelson" came to her relief, the schooner was drifting, her jury-rudder having been broken and she had been flying signals of distress all day. It was then 4 o'clock P. M. and darkness was coming on. Her position was less than one mile from a rocky shore southeast of Waddah Island, and the depth of the water was forty fathoms. When the steamer came within speaking distance, the captain of the schooner made a request to be towed to Port Townsend, and inquired what amount would be exacted as compensation for that service. The captain of the steamer responded, offering to take the schooner in tow, but refusing to fix any price for the service. A tow-line was then passed from the steamer and made fast to the bitt of the schooner; while this was being done, the captain of the schooner made declarations to the effect that he would only pay for towage and would not submit to a claim for salvage, to which the captain of the

steamer gave no heed, he being occupied with the business of maneuvering his vessel and getting under way. He proposed to pull the schooner by her anchor chain, to save his tow-line from the wear to which it was subjected by attaching it to the bitt, but the other captain objected to the delay which would have been necessary to put the chain in order for that use. There is a noticeable contrast between the anxiety of this man at that time and his bravado as a witness.

The task performed by the "Charles Nelson" was difficult on account of the state of the weather and sea, and the helpless condition of the schooner, as she could not be steered. During the night the tow-line, a new ten-inch manila hawser, parted three times and some damage was done to the heargear of the schooner by surging against the strain on the towing-line. The time during which the steamer was struggling with her tow until Port Angeles was reached, was about twenty hours. I find in the testimony no explanation for taking the vessel to Port Angeles instead of towing her to safe anchorage at Neah Bay or Clallam Bay, except the captain's request to be towed to Port Townsend.

The "Charles Nelson" was not seeking employment in the towing business, but was on a voyage from San Francisco to Seattle and other Puget Sound ports, having on board a cargo and a number of passengers.

The respondent has offered to pay \$1,000.00 as compensation for the service rendered and resists the claim for a larger sum on the alleged grounds

that the schooner was not in peril, being in a place where she could have anchored and her captain accepted assistance from the steamer only on condition that the compensation was to be a reasonable amount for mere towage service, and the damage to her head-gear was caused by negligence and want of skill in maneuvering the towing vessel.

I consider that this contention is completely refuted by the facts that the schooner was adrift near a rocky shore and signaling for immediate assistance; that the "Charles Nelson," was a passenger steamer; that the wind was blowing a gale of 50 miles per hour; that it would have been inexcusable for her captain to have risked loss of the vessel, her cargo and the lives of those on board by refusing assistance; and that the master of the steamer, refused positively to parley or bargain for any stipulated sum or rate of compensation. I consider that the schooner was in fact rescued from a situation of peril and there was no negligence or lack of skill in handling the unmanageable heavy ship in the tempestuous weather encountered.

Sanderson v. Johnson, Fed. Cas. No. 12,297A;

The Comanche, 8 Wall. 448;

The Excelsior, 123 U. S. 40.

The Court awards to the owner of the "Charles Nelson," \$3,500.00; to her captain, \$300.00; to her first mate \$100.00; and to her second mate and two assistant engineers, each \$50.00; and to each of the twenty members of the crew appearing as interveners, \$40.00, making a total sum of \$4,850.00. Because of the disclaimer in his testimony nothing is awarded to the chief engineer.

The Court finds the value of the schooner in the condition in which she was on arrival at Port Angeles, to have been \$27,500.00; and the value of her cargo, \$15,500.00. No freight had been fully earned and there is no basis in the evidence for an estimate of the value of the charter for the voyage, therefore under the decision in the case of *Perriam v. Pacific Coast Company*, 133 Fed. Rep. 140, freight must be eliminated from consideration. The salvage awarded as above stated will be apportioned so that \$3,102.00 will be charged against the schooner and \$1,748.00 against the cargo.

C. H. HANFORD,
Judge.

[Endorsed]: Memorandum Decision on the Merits. Filed in the U. S. District Court, Western District of Washington. March 11, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 3617.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The Schooner, "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber, Consisting of About 1,500,000
Feet, Board Measure of the Value of About
\$15,000,

Defendant,

H. SMITH et al.,

Intervening Libelants.

**Stipulation [Relative to Answer of the Globe Navi-
gation Company to Amended Libel of Charles
Nelson Company].**

It is hereby stipulated and agree by and between
the defendants the Globe Navigation Company, Limi-
ted, and H. R. Clise and George H. King, its proctors,
on the one part, and the intervening libelants H.
Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup,
O. Holstrom, G. Gutenberg H. Jostman, A. Sunwist,
E. Evans, and W. Line, Sailors, Frank Weston, John
Baberg, and James McCue, Firemen, Emil Soder-
berg, and Paul H. Moiser, Oilers, J. Wunderlick,
Steward, A. J. Howell, Cook, C. Dauchert, Cook's

Boys, and Andrew Doe, on the other part and J. Henry Denning their proctor, that the answer of the Globe Navigation Company, Limited to the amended libel of the Charles Nelson Company a corporation, libelants, stand and be considered as the answer of the Globe Navigation Company, Limited, to the libels of the aforesaid intervening libelants and each of them.

Dated this 1st day of December, A. D. 1908.

H. R. CLISE and
GEO. H. KING,

Attorneys for Defendants.

J. HENRY DENNING,

Attorney for Intervening Libelants.

[Endorsed]: Stipulation. Filed in the U. S. District Court, Western District of Washington. Apr. 5, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The Schooner, "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber, Consisting of About 1,500,000
Feet, Board Measure of the Value of About
\$15,000,

Defendant,

H. SMITH et al.,

Intervening Libelants.

Decree.

Now, to wit, on this the 5th day of April, A. D.
1909, this cause having been heard on the pleadings
and proofs, it is

Ordered, adjudged and decreed that the libelant,
The Charles Nelson Company, and the intervening
libelants hereinafter named, recover of the respond-
ent, the Schooner "Willis A. Holden," her apparel,
tackle, furniture, etc., and the claimant, The Globe
Navigation Company, and United States Fidelity &
Guaranty Company, stipulator, both as to the said
schooner and her cargo, the sum of \$4,850, for their

services as salvors as in the libel set forth, together with costs; and it is further

Ordered, adjudged and decreed that the said sum of \$4,850 be distributed as follows:

To the Charles Nelson Company, the owner of the steam schooner "Charles Nelson," the sum of \$3,500; to John Ranselius, her captain, the sum of \$300; to L. C. Hanson, her first mate the sum of \$100; to R. D. Macrea, her second mate, the sum of \$50; to her first assistant engineer the sum of \$50; to her second assistant engineer, the sum of \$50; and to each of the intervening libelants, H. Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup, O. Holstrom, G. Gutenberg, H. Jostman; A. Sunkwist, E. Evans, and W. Line, Sailors; Frank Weston, John Baberg, and James McCue, firemen; Emil Soderberg, and Paul H. Mosier, Oilers, J. Wunderlich, steward; A. J. Howell, cook; C. Dauchert, cook's boy, and Andrew Doe, cabin boy, the sum of \$40. It is further

Ordered, adjudged and decreed that the sum of \$4,850 be paid by the above-named vessel, the "Willis A. Holden," and her cargo as salvage compensation for the services performed by the libelants in the proportion of \$3,102 by the said vessel, and \$1,748 by the said cargo, and that the costs and charges incident to this proceeding be also paid by the said vessel and cargo respectively in the same proportions.

Done in open court this the 5th day of April, A. D. 1909,

C. H. HANFORD,
Judge,

[Endorsed]: Decree. Filed in the U. S. District Court, Western Dist. of Washington. April 5, 1909. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner, "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber, Consisting of About 1,500,000 Feet, Board Measure of the Value of About \$15,000,

Defendant,

H. SMITH et al.,

Intervening Libelants.

Petition for Appeal.

To the Honorable Judge of Said Court:

The above-named defendant and claimant the Globe Navigation Company, Limited, conceiving itself aggrieved by the final decree entered herein on the 5th day of April, 1909, in the above-entitled court in the above-entitled cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that this appeal may be allowed, that the amount of the supersedeas bond to be executed by said defendant on said

appeal may be fixed by the Court, and that a transcript of the records, proceedings and papers in said cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

GEO. H. KING,

H. R. CLISE,

Proctors for Defendant.

[Endorsed]: Petition for Appeal. Filed in the U. S. District Court, Western Dist. of Washington, April 5, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner, "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber, Consisting of About 1,500,000 Feet, Board Measure of the Value of About \$15,000,

Defendant,

H. SMITH et al.,

Intervening Libelants.

Order Allowing Appeal.

It is hereby ordered that the appeal of the Globe Navigation Company, Limited, from the final decree entered in this cause on the 5th day of April, 1909, be allowed as prayed for, and that the amount of the supersedeas bond to be executed by such defendant to supersede said decree pending said appeal be, and the same is hereby, fixed at the sum of Three Hundred Dollars.

Done in open court this 5th day of April, 1909.

C. H. HANFORD,

Judge,

[Endorsed]: Order Allowing Appeal. Filed in the U. S. District Court, Western Dist. of Washington. April 5, 1909. R. M. Hopkins, Clerk.

In the United States Circuit Court of Appeals, Ninth Circuit.

GLOBE NAVIGATION COMPANY, LIMITED (a Corporation), Claimant of Schooner "WILLIS A. HOLDEN,"

Appellant,

vs.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant and Appellee,

H. SMITH, V. ANDERSON et al.,

Intervening Libelants and Appellee.

Assignment of Errors.

Comes now the Globe Navigation Company, Limited, a corporation, by H. R. Clise and George H. King, its proctors and solicitors, and says that in the records and proceedings in the above-entitled court there is manifest error in this, to wit:

I.

That the Court below erred in finding that the service rendered by the "Charles Nelson" to the "Willis A. Holden" was a salvage and not a towage service, and erred in awarding the compensation for said service to the Charles Nelson Company, a corporation, on the basis of salvage service and not on the basis of towage service.

II.

That the Court below erred in failing to find that the service rendered by the "Charles Nelson" to the "Willis A. Holden" was a towage service under contract, and that the sum of One Thousand Dollars tendered by the Globe Navigation Company, Limited, claimant of said "Willis A. Holden" to said The Charles Nelson Company, a corporation, was a fair and reasonable charge for such service.

III.

That the Court below erred in finding that the schooner "Willis A. Holden" was in a situation of peril when taken in tow by the "Charles Nelson."

IV.

That the Court below erred in finding that there was no negligence or lack of skill on the part of the "Charles Nelson," its officers and crew in towing the

schooner "Willis A. Holden" from Waaddah Island to an anchorage at Port Angeles.

V.

That the Court erred in failing to find that the steamer "Charles Nelson," her officers and crew, were negligent, careless and unseamanlike in towing said schooner "Willis A. Holden" to Port Angeles as aforesaid.

VI.

That the Court erred in finding that the wind was blowing a gale of fifty miles an hour or that any wind in excess of a moderate breeze was blowing at the time the steamer "Charles Nelson" took the schooner "Willis A. Holden" in tow.

VII.

That the Court erred in awarding to the captain of the "Charles Nelson" the sum of Three Hundred Dollars; and to the First Mate the sum of One Hundred Dollars; and to the Second Mate and two Assistant Engineers the sum of Fifty Dollars each, and to the twenty men of the crew of said the "Charles Nelson" the sum of Forty Dollars each, for the reason that it does not appear that said Captain, officers and crew of said steamer "Charles Nelson," or either or any thereof, rendered any service or services whatsoever during the time said "Charles Nelson" had said schooner "Willis A. Holden" in tow, other than the ordinary and usual duties and services of officers and seamen on board said steamer "Charles Nelson."

VIII.

That the Court below erred in rendering a decree against the appellant, and against the schooner "Wil-

lis A. Holden," her tackle, apparel, furniture and cargo in the sum of Four Thousand Eight Hundred and Fifty (\$4,850) Dollars, together with interest and cost of suit, or in any sum whatsoever over and above the sum of One Thousand (\$1,000) Dollars tendered by the appellant to The Charles Nelson Company, a corporation.

IX.

That the Court below erred in failing to find that the sum of One Thousand Dollars tendered by the appellant to the libelant, The Charles Nelson Company, a corporation, was a reasonable, just and fair compensation for the service rendered by the steamer, "Charles Nelson" to the schooner "Willis A. Holden."

X.

That the Court below erred in failing to dismiss this action at the cost of said appellant.

XI.

For other errors manifest upon the records.

Wherefore, the said appellant the Globe Navigation Company, Limited, a corporation, prays that the decree of the said District Court of the United States for the Western Division of Washington, Northern Division, entered in the above-entitled action, be reversed and that the proper decree be rendered herein decreeing that on the payment of the Globe Navigation Company, Limited, a corporation, to the Charles Nelson Company, a corporation, of the sum of One Thousand (\$1,000) Dollars, that this action be dis-

382 *The Globe Navigation Company, Limited*,
missed, and that said appellant recover its costs in
this Court and in the Court below.

H. R. CLISE,
GEO. H. KING,
401 Globe Building,
Seattle, King County, Washington.

[Endorsed]: Assignment of Errors. Filed in the
U. S. District Court, Western Dist. of Washington.
April 5, 1909. R. M. Hopkins, Clerk. W. D. Cov-
ington, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Cor-
poration),

Libelant,

vs.

The Schooner, "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber, Consisting of About 1,500,000
Feet, Board Measure of the Value of About
\$15,000,

Defendant,

H. SMITH et al.,

Intervening Libelants.

Supersedeas and Appeal Bond.

Know All Men by These Presents, that we, the
Globe Navigation Company, Limited, as principal,

and American Surety Company of New York, a corporation, organized under the laws of the State of New York, as surety, are held and firmly bound unto the above-named The Charles Nelson Company, a corporation, in the full sum of Three Hundred (\$300) Dollars, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we hereby bind ourselves and each of us, and our and each of our successor, or successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 5th day of April, 1909.

Whereas, the above-named Globe Navigation Company, Limited, a corporation, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the final decree rendered in the above-entitled suit on the 5th day of April, 1909, by the Judge of the Circuit Court of the United States for the Western District of Washington, Northern Division, sitting in Admiralty.

Now, therefore, the condition of this obligation is such that if the above named, the Globe Navigation Company, Limited, a corporation, the appellant, shall prosecute said appeal to effect, and pay all costs and damages if said appeal is not sustained, and further that said appellant, the Globe Navigation Company, Limited, will abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause, or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the

384 *The Globe Navigation Company, Limited,*
court below, then this bond shall be void; otherwise
the same shall be and remain in full force and virtue.

GLOBE NAVIGATION COMPANY, LIM-
ITED.

By G. F. THORNDYKE,
Manager.

AMERICAN SURETY COMPANY OF
NEW YORK.

By R. D. WELDON,
Resident Vice-President.

Attest: EDWARD J. LYONS,
Resident Assistant Secretary.

Approved this 12th day of April, 1909.

C. H. HANFORD,
Judge of the U. S. District Court.

[Endorsed]: Supersedeas and Appeal Bond.
Filed in the U. S. District Court, Western Dist. of
Washington. April 12, 1909. R. M. Hopkins,
Clerk. W. D. Covington, Deputy.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 3617.

THE GLOBE NAVIGATION COMPANY, LTD.
(a Corporation), Claimant of the Schooner
"WILLIS A. HOLDEN,"

Appellant,

vs.

THE CHARLES NELSON COMPANY (a Corpo-
ration) et al.,

Appellees.

Citation [Copy].

The United States of America to The Charles Nelson Company, a corporation, John Ranselius, Captain, L. C. Hanson, First Mate, R. D. MacRae, Second Mate, the First Assistant Engineer and the Second Assistant Engineer, of the Steam Schooner "Charles Nelson," appearing by Messrs. Kerr & McCord, their proctors, and H. Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup, O. Holstrom, G. Gutenberg, H. Jostman, A. Sunkwist, E. Evans, and W. Line, Sailors; Frank Weston, John Baberg, and James McCue, Firemen; Emil Soderberg, and Paul H. Mosier, Oilers; J. Wunderlich, Steward; A. J. Howell, Cook; C. Dauchert, Cook's boy, and Andrew Doe, Cabin Boy, of said Steam Schooner "Charles Nelson, appearing by J. Henry Denning, Esq., their proctor, and the Globe Navigation Company, Ltd., Claimant of the Schooner "Willis A. Holden," appearing by Mr. H. R. Clise and George H. King, its proctors, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, within thirty days from this date, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein The Charles Nelson Company, a cor-

poration, John Ranselius, Captain, L. C. Hanson, First Mate, R. D. MacRae, Second Mate, the First Assistant Engineer, of the Steam Schooner "Charles Nelson," are libellants and appellees, and H. Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup, O. Holstrom, G. Gutenberg, H. Jostman, A. Sunkwist, E. Evans, and W. Line, Sailors; Frank Weston, John Baberg, and James McCue, Firemen; Emil Soderberg, and Paul M. Mosier, Oilers; J. Wunderlich, Steward; A. J. Howell, Cook; C. Dauchert, Cook's boy, and Andrew Doe, Cabin Boy, of said Steam Schooner "Charles Nelson," are intervening libellants and appellees, and the Globe Navigation Company, Ltd., as Claimant of the Schooner "Willis A. Holden," her tackle, apparel, and furniture, and cargo of lumber consisting of 1,500,000 feet, board measure, is defendant and appellant, to show cause, if any there be, why the final decree in said cause should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable C. H. HANFORD, Judge of the United States District Court for the Western District of Washington, Northern Division, this 10th day of April, A. D. 1909.

C. H. HANFORD,
Judge.

Attest: R. M. HOPKINS,
Clerk of the United States District Court for the
Western District of Washington, Northern Division.

[**Acknowledgment of Receipt of Certified Copy of
Citation, etc.**]

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. —.

THE GLOBE NAVIGATION COMPANY, LTD.
(a Corporation), Claimant of the Schooner
“WILLIS A. HOLDEN,”

Appellant,

vs.

THE CHARLES NELSON COMPANY (a Corpo-
ration) et al.,

Appellees.

We and each of us hereby acknowledge receipt on this 10th day of April, 1909, of a duly certified copy of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, issued in said cause on the 10th day of April, 1909; and also acknowledge receipt of a duly certified copy of the notice of appeal in said cause filed in the United States District Court of the Western District of Washington, Northern Division on the 9th day of April, 1909.

KERR & McCORD,

Proctors for Libellants.

J. HENRY DENNING,

Proctors for Intervening Libellants.

[Endorsed]: Citation. Filed in the U. S. District Court, Western Dist. of Washington. April 12, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber, Consisting of About 1,500,000 Feet, Board Measure, of the Value of About \$15,000, Defendant.

H. SMITH et al.,

Intervening Libellant.

Notice of Filing Bond.

To Messrs. Kerr & McCord, Proctors for Libelants, and J. Henry Denning, Proctor for Intervening Libelant:

You and each of you are hereby notified that on the 9th day of April, 1909, the appellant, the Globe Navigation Company, Limited, claimant of the schooner "Willis A. Holden," filed in said court its Supersedeas and Appeal Bond in the above-entitled proceedings in the sum of three hundred (\$300) dol-

lars, and that the name and residence of the surety in said bond is the American Surety Company, of New York, with its principal place of business in the City of New York and State of New York, and also doing business in the City of Seattle, Washington, and authorized under the laws of the State of Washington to become surety on such bond.

H. R. CLISE,
GEO. H. KING,

Proctors for Globe Navigation Company, Limited,
Claimant and Appellant of the Schooner "Willis
A. Holden."

[Endorsed]: Notice of Filing Bond. Filed in the U. S. District Court, Western Dist. of Washington. April 10, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy. Copy of within notice received April 10, 1909. Kerr & McCord, Proctors for Libellants. Proctor for Intervening Libellant, J. Henry Denning.

[Order Permitting Transmission of Original Exhibits to Circuit Court of Appeals.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," etc.,

Defendant.

Now, on this 6th day of May, 1909, upon application of proctors for claimant, and for sufficient cause appearing, it is ordered that the Clerk of this Court may transmit to the Circuit Court of Appeals the original exhibits filed and introduced upon hearing and trial of this cause, there to be inspected and considered, together with the transcript of the record on appeal in this cause.

C. H. HANFORD,

Judge.

[Endorsed]: Order to Send up Original Exhibits. Filed in the U. S. District Court, West. District of Washington. May 6, 1909. R. M. Hopkins, Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

IN ADMIRALTY—No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant,

vs.

The Schooner "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber, Consisting of About 1,500,000 Feet,
Board Measure, of the Value of About \$15,000,
Defendant.

H. SMITH et al.,

Intervening Libelants.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare and properly certify a transcript of the record in this cause and insert therein the following for use on appeal:

Libel, filed January 10, 1908.

Libellant's stipulation for costs, filed January 10, 1908.

Appearance of Claimant, filed January 15, 1908.

Claim of Globe Navigation Co., Ltd., filed January 15, 1908.

Claimant's stipulation for costs, filed January 15, 1908.

392 *The Globe Navigation Company, Limited,*

Stipulation to take deposition, filed January 27, 1908.

Amended libel, filed February 4, 1908.

Replication, filed February 4, 1908.

Notice of appearance of intervening libellants, filed April 14, 1908.

Intervening libel, filed April 29, 1908.

Deposition, filed April 16, 1908.

Stipulation, filed January 25, 1909.

Testimony reported by commissioner, filed January 27, 1909.

Exhibits 1, 2 and 3, filed January 27, 1909.

Answer to amended libel, filed March 11, 1909.

Memo decision on merits, filed March 11, 1909.

Stipulation with intervening libelants, April 5, 1909.

Final decree, filed April 5, 1909.

Petition for appeal, filed April 5, 1909.

Order allowing appeal, filed April 5, 1909.

Assignment of error, filed April 5, 1909.

Supersedeas bond, filed April 9, 1909.

Citation issued April 10, 1909.

Acknowledgment of service of citation, filed April 10, 1909.

Notice of filing bond, with acknowledgment of service, filed April 12, 1909.

Statement filed April 12, 1909.

Dated April 12, 1909.

GEO. H. KING and
H. R. CLISE,
Proctors for Appellant.

[Endorsed]: Praeceptum for Transcript. Filed in the U. S. Dist. Court, Western Dist. of Washington. April 12, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3617.

THE CHARLES NELSON COMPANY (a Corporation),

Libelant and Appellee,
vs.

The Schooner "WILLIS A. HOLDEN," Her Tackle, Apparel, Furniture, etc., and a Cargo of Lumber, Consisting of About 1,500,000 Feet, Board Measure, of the Value of About \$15,000,
Defendant and Appellant.

H. SMITH et al.,

Intervening Libelants.

Clerk's Certificate to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, R. M. Hopkins, Clerk of the District Court of the United States, for the Western District of Washington, do hereby certify the foregoing three hundred seventy-seven (377) typewritten pages, numbered from 1 to 377, inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled cause as is called for by the prae-

cipe of the proctors for appellant, as the same remain of record and on file in the office of the Clerk of the said court, and that the same, together with the original exhibits, separately certified, constitute the apostles on appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify that I hereto attach and herewith transmit the Original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing apostles is the sum of \$282.20, and that the said sum has been paid to me by Geo. H. King and H. R. Clise, proctors for defendant and appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 11th day of May, 1909.

[Seal]

R. M. HOPKINS,

Clerk.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 3617.

THE GLOBE NAVIGATION COMPANY, LTD.
(a Corporation), Claimant of the Schooner
"WILLIS A. HOLDEN,"

Appellant,

vs.

THE CHARLES NELSON COMPANY (a Corpo-
ration) et al.,

Appellees.

Citation [Original].

The United States of America to The Charles Nelson Company, a Corporation, John Ranselius, Captain, L. C. Hanson, First Mate, R. D. MacRae, Second Mate, the First Assistant Engineer and the Second Assistant Engineer, of the Steam Schooner "Charles Nelson," Appearing by Messrs. Kerr & McCord, Their Proctors, and H. Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup, O. Holstrom, G. Gutenberg, H. Jostman, A. Sunkwist, E. Evans, and W. Line, Sailors; Frank Weston, John Baberg, and James McCue, Firemen; Emil Soderberg, and Paul H. Mosier, Oilers; J. Wunderlich, Steward; A. J. Howell, Cook; C. Dauchert, Cook's Boy, and Andrew Doe, Cabin Boy, of said Steam Schooner "Charles Nelson," Appearing by J. Henry Denning, Esq., Their Proctor, and the Globe Navigation Company, Ltd., Claimant of the Schooner "Willis A. Holden," Appearing by Mr. H. R. Clise and George H. King, Its Proctors, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, within thirty days from this date, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein The Charles Nelson Company, a cor-

poration, John Ranselius, Captain, L. C. Hanson, First Mate, R. D. MacRae, Second Mate, the First Assistant Engineer, and the Second Assistant Engineer, of the Steam Schooner "Charles Nelson," are libellants and appellees, and H. Smith, V. Anderson, W. Sirens, K. Karlson, B. Tup, O. Holstrom, G. Gutenberg, H. Jostman, A. Sunkwist, E. Evans, and W. Line, Sailors; Frank Weston, John Baberg, and James McCue, Firemen; Emil Soderberg, and Paul M. Mosier, Oilers; J. Wunderlich, Steward; A. J. Howell, Cook; C. Dauchert, Cook's boy, and Andrew Doe, Cabin Boy, of said Steam Schooner "Charles Nelson," are intervening libellants and appellees, and the Globe Navigation Company, Ltd., as Claimant of the Schooner "Willis A. Holden," her tackle, apparel, and furniture, and cargo of lumber consisting of 1,500,000 feet, board measure, is defendant and appellant, to show cause, if any there be, why the final decree in said cause should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable C. H. HANFORD, Judge of the United States District Court for the Western District of Washington, Northern Division, this 10th day of April, A. D. 1909.

C. H. HANFORD,
Judge.

[Seal] Attest: R. M. HOPKINS,
Clerk of the United States District Court for the
Western District of Washington, Northern Division.

[**Acknowledgment of Receipt of Certified Copy of
Citation, etc.—Original.**]

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. ———.

THE GLOBE NAVIGATION COMPANY, LTD.
(a Corporation), Claimant of the Schooner
“WILLIS A. HOLDEN,”

Appellant,

vs.

THE CHARLES NELSON COMPANY (a Corpo-
ration) et al.,

Appellees.

We and each of us hereby acknowledge receipt on this 10th day of April, 1909, of a duly certified copy of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, issued in said cause on the 10th day of April, 1909; and also acknowledge receipt of a duly certified copy of the notice of appeal in said cause filed in the United States District Court for the Western District of Washington, Northern Division, on the 9th day of April, 1909.

KERR & McCORD,

Proctors for Libellants.

J. HENRY DENNING,

Proctor for Intervening Libellants.

[Endorsed]: 3617. United States Circuit Court of Appeals, Ninth Circuit. The Globe Navigation Co., Ltd., Claimant of the Schooner “Willis A. Holden,” Appellant, vs. The Charles Nelson Company

398 *The Globe Navigation Company, Limited,*
et al., Appellees. Citation. Filed in the U. S. Dis-
trict Court, Western Dist. of Washington. Apr. 12,
1909. R. M. Hopkins, Clerk. W. D. Covington,
Deputy. H. R. Clise and Geo. H. King, Attorneys
for Appellant, 400 & 401 Globe Block, Seattle, Wash-
ington.

[Endorsed]: No. 1720. United States Circuit
Court of Appeals for the Ninth Circuit. *The Globe*
Navigation Company, Limited, as Claimant of the
Schooner "Willis A. Holden," Her Tackle, Apparel
and Furniture, and a Cargo of Lumber Consisting
of 1,500,000 Feet, Board Measure, Appellant, vs.
The Charles Nelson Company, a Corporation, John
Ranselius, Captain, L. C. Hanson, First Mate, R. D.
MacRae, Second Mate, the First Assistant Engineer
and the Second Assistant Engineer, of the Steam
Schooner "Charles Nelson," Libelants, and H. Smith,
V. Anderson, W. Sirens, K. Karlson, B. Tup, O.
Holstrom, G. Gutenberg, H. Jostman, A. Sunkwist,
E. Evans, and W. Line, Sailors; Frank Weston,
John Baberg and James McCue, Firemen; Emil So-
derberg and Paul H. Mosier, Oilers; J. Wunderlich,
Steward, A. J. Howell, Cook; C. Dauchert, Cook's
Boy, and Andrew Doe, Cabin Boy, of said Steam
Schooner "Charles Nelson," Intervening Libelants,
Appellees. Apostles on Appeal. Upon Appeal from
the United States District Court for the Western
District of Washington, Northern Division.

Filed May 17, 1909.

F. D. MONCKTON,
Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 3617.

THE CHARLES NELSON COMPANY (a Corpo-
ration),

Libellant and Appellee,

vs.

The Schooner "WILLIS A. HOLDEN," Her
Tackle, Apparel, Furniture, etc., and a Cargo
of Lumber Consisting of About 1,500,000
Feet, Board Measure, of the Value of About
\$15,000,

Defendant and Appellant.

H. SMITH et al., Intervening Libelants.

Clerk's Certificate to Original Exhibits.

I, R. M. Hopkins, Clerk of the District Court of
the United States, for the Western District of Wash-
ington, do hereby certify that the hereto attached
sealed package contains the original exhibits, "1"
Chart, "2" Diagram, "3" Survey, introduced and
used upon the hearing and trial of the foregoing enti-
tled cause, which said exhibits I herewith transmit to
the Circuit Court of Appeals, there to be inspected
and considered, together with the apostles on appeal
in this cause, said exhibits being so transmitted pursu-
ant to the order of the District Court so directing, a

400 *The Globe Navigation Company, Limited,*
copy of which said order will be found on page 372
of the Apostles on Appeal in this cause.

In testimony whereof I have hereunto set my hand
and affixed the seal of said District Court, at Seattle,
in said District, this 11th day of May, 1909.

[Seal]

R. M. HOPKINS,

Clerk.

F. D. MONCKTON, Clerk.

Received MAY 17, 1909.

EXHIBIT 1

FOR THE NINTH CIRCUIT

U. S. CIRCUIT COURT OF APPEALS

No. 1720

FILED IN THE
 U. S. District Court,
 Western Dist. of Washington.
 JAN 27 1909.
 R. M. HOPKINS, Clerk,
 Deputy
 W. D. Monckton

U. S. Commissioner,
 Western District of Washington.

Free Press 1208
 J. J. Gorman

Respondent:

Ben McKie & Watson

Libellant:
 v

Chas Nelson

United States District Court,
 Western District of Washington,
 NORTHERN DIVISION.

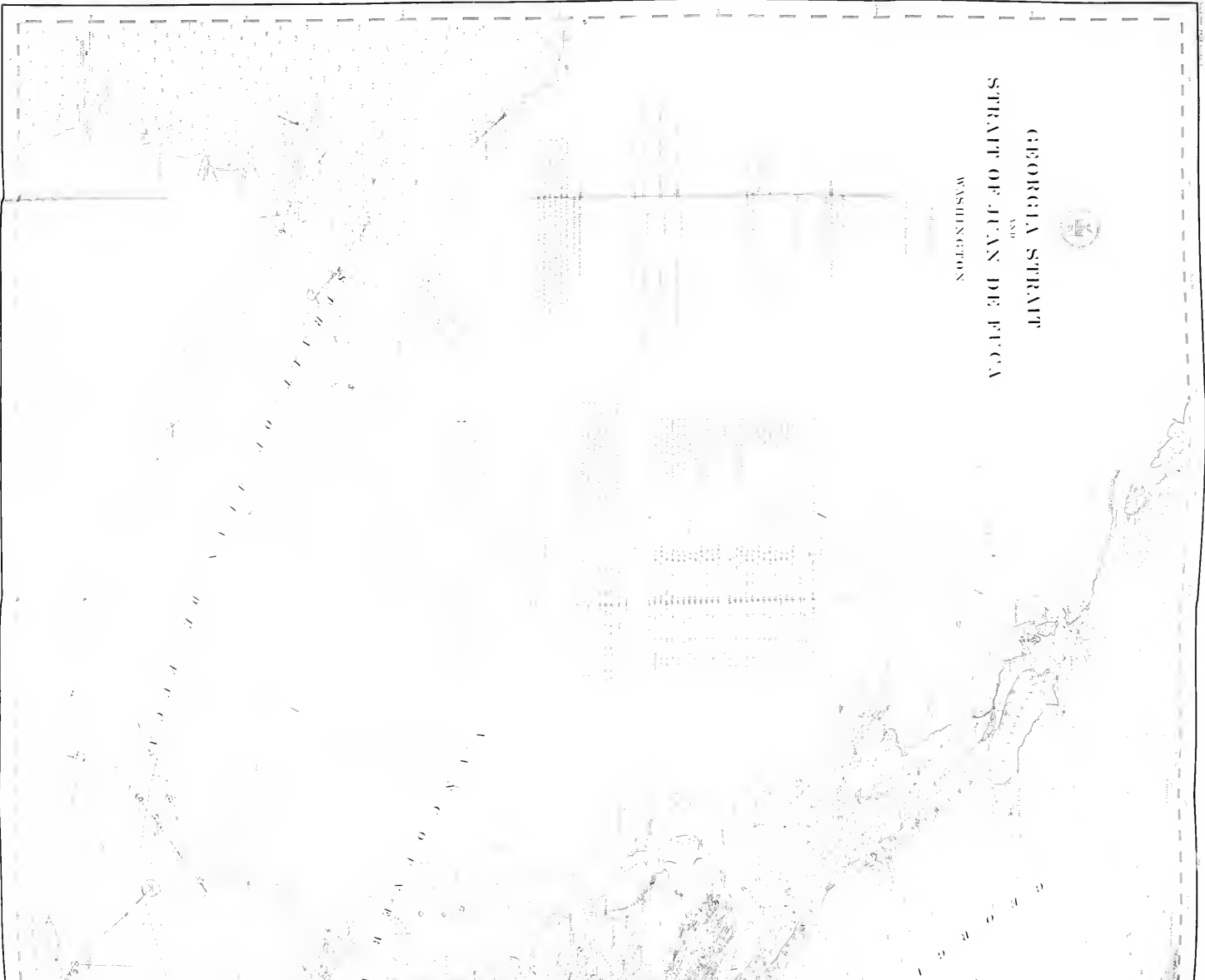
No.

3617

Ex. 1



GEORGIA STRAIT
AND
STRAIT OF JEAN DE FUCA
WASHINGTON





BRITISH
COLUMBIA

42



S N

E 2 *JK*

No 3617

United States District Court
 Western District of Washington
 NORTHERN DIVISION

P. H. Nelson Co
 Libellant

John W. Miles & Holden

Respondent

Filed Nov. 12, 1908

W. J. Johnson
U. S. Clerk

FILED IN THE
 U. S. DISTRICT COURT
 Western Dist. of Washington
 JAN 27 1909
 P. M. HOPKINS, Clerk
1126 Washington
Seattle

No 1720
 CIRCUIT COURT OF APPEALS
 FOR THE NINTH CIRC.
 EXHIBIT
 Received May 1909
 F. D. MONTGOMERY, Clerk

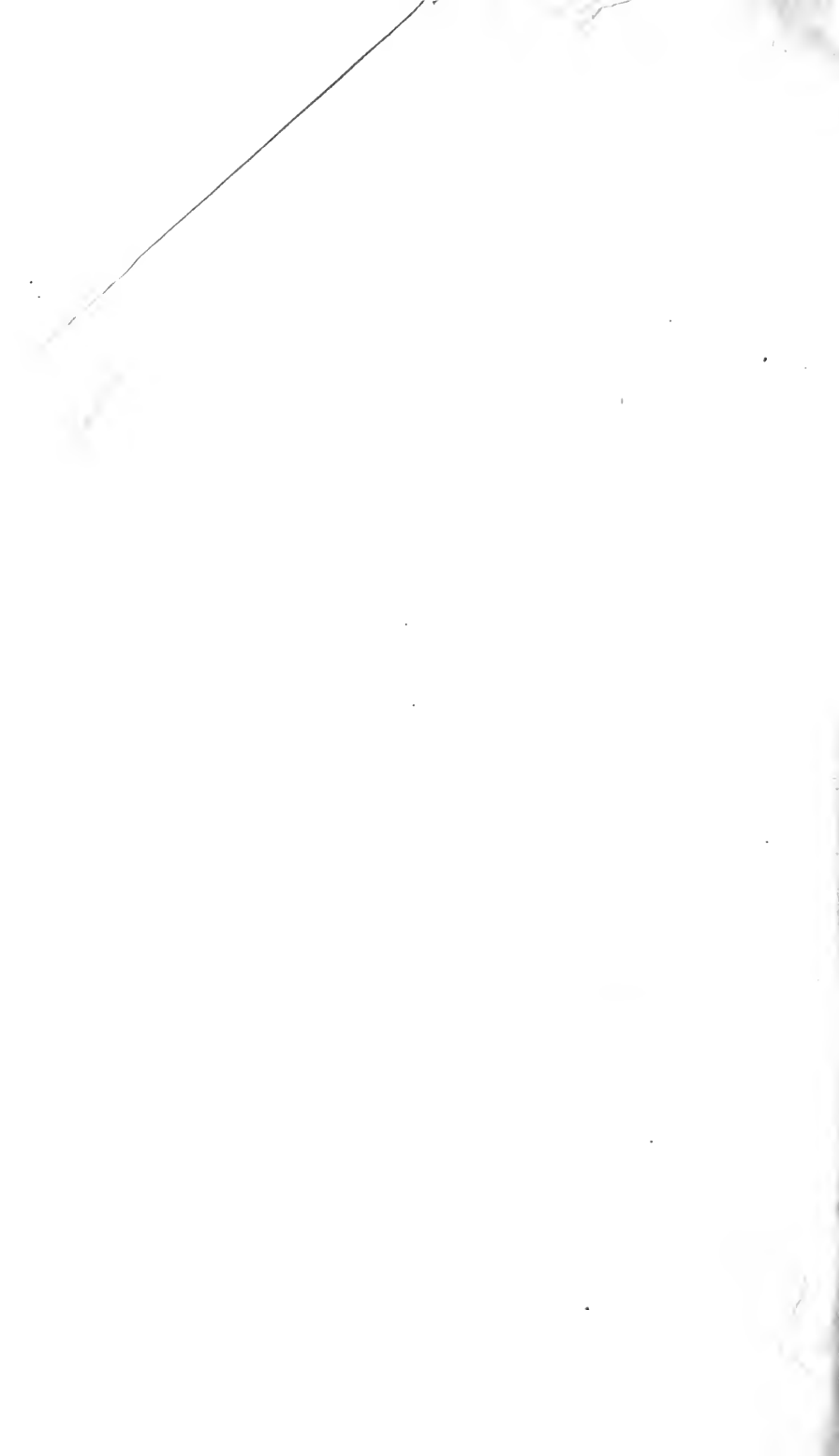


Exhibit 3.

REPORT OF SURVEY.

Am. 4 Mst. Schr. "WILLIS A. HOLDEN."

Reg. Gross Tons—1188.

A. Laur—Master.

At the request of the Owners' and the Underwriters' representatives, we, the undersigned, did, on the 14th day of Dec., 1907, and subsequent dates, hold survey upon the above named vessel for the purpose of ascertaining the extent of damage alleged to have been sustained by the loss of her rudder while on a voyage from Willapa to Shanghai, and subsequently the extent of damage sustained in working vessel back to Puget Sound and while in tow of Str. "Chas. Nelson."

By abstracts taken from the vessel's log and by report of the Master, it appears that she left Willapa Harbor with a full cargo of lumber on Nov. 30th, 1907, bound for Shanghai; that all went well until Dec. 2d, when towards midnight the wind increased to a gale from the S. E.; Dec. 3d at about 11 A. M. the main and mizzen hog lashings carried away and deck load shifted, the lashings were secured as soon as possible, and in the meantime gale had increased to hurricane force, all sails were made fast and a sea anchor put out, made of mizzen sail attached to a 8" hawser; Dec. 4th, at 4 A. M., the wind hauled to S. W.; sails were set and the sea anchor cut adrift, at daylight it was found that the rudder head was sprung, and on account of this damage, coupled with

the fact of the deckload having shifted and ship with a big list, the Master decided to return to Puget Sound, and set his course accordingly; by night the rudder head was so badly twisted that ship would no longer answer her helm. Dec. 5th a jury rudder was made and put out; on the morning of the 6th, when towards night, the increasing wind and sea carried the jury rudder away. Dec. 7th, a second rudder was made and put out. Dec. 8th, during S. E. gale, the rudder stock broke about 18" below stern, and rudder went adrift. Dec. 9th vessel having a heavy list, straightened her somewhat by jettisoning about 25 M ft. of lumber; at 7 P. M. sighted Cape Flattery light. Dec. 10th blowing a heavy S. E. gale, vessel drifting towards Vancouver Island, rigged sea anchor out of spare gaff and mainsail attached to 300 ft. steel wire, and ranged port cable and shackled same to Stbd. cable in readiness to let go, at 2:30 P. M. wind hauled to S. W., cut sea anchor adrift and set sails. Dec. 11th wind increased to S. E. gale, carried away two jibs in endeavoring to steer vessel; 2:30 P. M. wind moderated and hauled to S. W., ship heading in to Straits of Juan de Fuca. at 3 P. M., being unable to control vessel, she drifted over the Swift Sure Bank buoy. Dec. 12th passed Cape Flattery at 1 A. M., and by 4 P. M. had worked the vessel to about one mile east of Wadadah Island, at which time the S. S. "Chas. Nelson" came alongside and agreed to tow vessel to Port Townsend. Dec. 13th, at 12:30 A. M., blowing a hard S. W. gale, the tow-line parted three times and

was put on board again; the head gear was badly damaged at this time by tow-line; at 11 A. M. dropped anchor at Port Angeles; later vessel was towed to Port Blakeley and survey held. For full particulars of disaster see ship's log and protest.

Upon making an examination of stern post as far as possible above water and by the aid of a submarine diver below we found that all rudder braces had been torn from the stern post, thus making it impossible to repair without placing the ship on drydock, therefore we recommended that the deck load be removed, as same was shifted and would need restowing, and vessel be placed on drydock for further examination and repairs. It being our opinion that the vessel could be safely docked with her hold full provided care was taken in placing her on the blocks, and that the only damage likely to ensue was the starting of the cement in her butts and lower seams, the buckling of the copper on the keel and the crushing of her wearing shoe by the extra weight of the cargo.

We also recommended that bids be obtained for a new rudder complete, with all necessary braces, bids to include the removal of old stock, install new rudder, and all dry docking necessary.

The deck cargo was removed as recommended and Messrs. Hall Bros. having secured the contract for installing the new rudder, the ship was towed from Pt. Blakeley to Eagle Harbor and placed on drydock Dec. 24th, 1907, and upon making a further examination of vessel we found the damage to consist as follows:

Findings.

Rudder with all fittings entirely gone.

Several seams and butts started in bottom planking, also cement, evidently the result of docking with extra heavy weight in vessel.

Shoe for entire length badly damaged by blocks cutting into same, and copper between shoe and keel badly buckled; this damage also resulting from extra heavy weight in vessel.

Forefoot badly chafed, copper along keel torn in places and paint on bottom chafed; alleged by passing over Swiftshure Buoy in efforts to work vessel off Lee shore.

Figure head torn adrift, stem and bow planking chafed and bruised, alleged by "Chas. Nelson" tow line.

One cargo gaff used for jury rudder and one spare gaff used for sea anchor.

Mouldings over mizzen chain plates port side badly cut into; alleged by "Chas. Nelson" in getting hawser on board.

Planking all around stern badly chafed and bruised; alleged by handling jury rudder.

Covering board on rail stbd. side split and partly gone; alleged by getting jury rudder over the side.

Flying jib stay carried away and rendered useless, outer bobstay chain carried away and partly lost, 2nd: bobstay band on jig boom broken clear off: 3rd: bobstay turnbuckle carried away and lost.

All back ropes badly chafed on the service, alleged by "Chas. Nelson" tow line.

Recommendations.

To be replaced by new as previously recommended.

To be carefully gone over, calked and recemented.

Vessel to be dry docked and shoe to be entirely renewed at the earliest opportunity and copper to be repaired at same time, it being impractical to remove the blocks at this docking.

Forefoot to be trimmed off, graving piece fitted and copper along keel renewed where torn, part of bottom where chafed to be repainted with two coats copper paint.

Figure head to be removed and re-fastened, chafes to be trimmed off and bruises repaired by graving pieces and bare spots repaired.

To be replaced by new.

To be trimmed off and fitted with graving pieces.

To be trimmed off and graving pieces fitted where necessary and coated with two coats of black paint.

To be renewed for about 35 ft.

Flying jib stay to be replaced by new. Outer bobstay repaired and partly renewed. 2nd bobstay band to be renewed, also 3rd bobstay turnbuckle.

The service on back ropes and foot ropes to be repaired where necessary.

Findings.

The fore topmast started at fid and pulled down on same, evidently by the extra strain put on head gear when same was carried away as above-mentioned.

Main and mizzen sheer poles bent on both sides main and mizzen rigging and back stays badly chafed, on service; alleged by deck cargo shifting and in jettisoning same to right vessel.

Topsides in way of poop and fore-castle head started and leaking in galley and half deck on port side, vessel generally strained fore and aft; alleged by shifting of deck cargo and laboring afterwards.

Mast coat to foremast and donkey boiler hood and smoke stack carried away; alleged by "Chas. Nelson" tow line.

Two mast protectors, one to main and one to mizzen carried away and pump box badly broken; alleged by shipping of deck cargo.

Galley and cabin smoke stacks carried away; alleged by "Chas. Nelson" tow line and handling jury rudders, respectively.

Wheel box and wood cover for after boat badly broken up, alleged by handling jury rudders.

Quarter davits bent and sockets for same started, two stanchions in after rail on poop broken, also gangway stanchion on port side of half deck; alleged by handling jury rudders.

Recommendations.

The fore topmast rigging to be come up, also back and head stays, iron plate to be fitted under fid and supporters carried up to lower mast head, all rigging to this mast set up as required.

Sheer poles to be removed, straightened and returned, service and ratlines repaired where necessary.

Topsides in way of galley and fore part of half deck to be searched, calked and made tight and painted.

Mast coat to foremast, and donkey boiler hood and smoke stack to be renewed.

To be renewed.

To be renewed above the deck.

Wheel box to be repaired and boat cover to be renewed.

Quarter davits to be removed, faired and returned, broken stanchions in poop rail to be renewed.

Findings.

All rooms under fore-castle head flooded including galley and engine room; stove in galley broken, lockers and drawers in galley gutted out, carpenters room, cook's room, store room and engine room, doors washed away, lockers and drawers more or less broken up and contents destroyed, after engine room door and after fore-castle windows broken beyond repair; alleged washed out owing to vessel having heavy list after deck load shifted.

Donkey pump and main pumps in bad condition, having been in constant use during return of vessel.

Spare main and mizzen sail used as sea anchors and cut adrift, two jibs, one inner and one outer carried away in efforts to steer vessel; foresail, mainsail and mizzen more or less damaged in efforts to get vessel off lee shore.

Three hatch tarpaulins more or less damaged by taking out cargo at Port Blakeley.

The following list of ship chandlery, stores, etc., we recommend be replaced as per attached specifications, said specifications to form a part of this report.

We also examined the remnants of one 10" hawser and damaged deck lashings; the hawser we consider damaged to the extent of 75% of its original value; the deck and hog lashings we consider damaged to the extent of 50% of their original values.

Respectfully submitted,

S. B. GIBBS,
Surveyor to S. F. Board of Marine Underwriters.

F. WALKER,
Surveyor for Owners.

Port Blakeley and Eagle Harbor, Wash., Dec. 14th, 1907.

Recommendations.

All rooms under fore-castle head to be cleaned and painted, lockers and drawers refitted in all rooms, galley range to be repaired, doors to carpenter's room, cook's room, store room to be renewed, also windows to galley and fore-castle.

To be overhauled, new valves and leathers fitted where necessary and pumps put in good working order.

Main and mizzen sails, one inner and one outer jib to be replaced as per attached specifications. The foresail, mainsail and mizzen to be repaired.

To be renewed.

SPECIFICATIONS FOR SHIP CHANDLERY,
SPARE GEAR, ETC.

Am. 4 Mst. Schr. "WILLIS A. HOLDEN."

Tenders are requested for supplying the following gear and stores to the above-named vessel:

ROPES:

One 10" hawser, 150 fths.

One coil 8" manila.

Two coils $3\frac{3}{4}$ " manila.

One coil $3\frac{1}{4}$ " manila.

One coil $2\frac{3}{4}$ " manila.

90 ft. 6" bolt rope.

180 ft. $3\frac{1}{4}$ " bolt rope.

600 ft. $\frac{5}{8}$ " wire donkey fall.

One and a half coils $3\frac{3}{4}$ " manila for halyards.

One coil $3\frac{1}{2}$ " manila for halyards.

One coil $2\frac{3}{4}$ " manila for downhaulers.

105 ft. $1\frac{1}{4}$ " manila for boom pennants.

124 ft. $1\frac{1}{4}$ " dia. steel wire for flying jib stay.

CHAIN LASHINGS, TURNBUCKLES, etc.:

Two deck lashings $\frac{5}{8}$ " galv. chain 60' long each.

Two hog lashings $\frac{3}{4}$ " black iron chain 35' long each.

One turnbuckle for above, $1\frac{1}{2}$ ".

25 ft. $\frac{5}{8}$ " galv. chain.

Two 12" snatch blocks.

Four 9" tackle.

Two marlin spikes.

One spike maul.

One hand hammer.

One shackle bar.

Two crow bars.

One splitting bar.

Two pike poles.

One boat hook.

One 3½" suction valve and coupling.

One log line rotator.

One spirit compass 9".

One brass cabin lamp swing with 5" bowl.

Two deck lanterns.

Two red lanterns.

Six assorted shackles.

Four 1" screw bolts 6" long.

Six tube stoppers, rods for donkey boiler.

One pump handle.

Four 5/8" screw bolts 22" long.

Two halyard hooks 7/8" 6' long.

One hook for strongback to hatches.

IRON AND NAILS:

6' of ½" round steel.

15' 5/8" galv. iron.

4' 5/8" round steel.

15' ¾" round iron.

6' ¾" round steel.

20' 1" round iron.

10' 1" round steel.

6' 1" round tool steel.

25 lbs. 8" galv. spikes.

15 lbs. 7" galv. spikes.

25 lbs. 8" wire nails.

10 lbs. 6" wire nails.

LUMBER:

- 18 pcs. 2"x12"x12'.
- 1 pc. 8"x10"x12' clear.
- 4 pcs. 4"x12"x40'.
- 6 pcs. 6"x9"x24'.

FUEL, OIL, ETC.:

- 1 ton coal in sacks.
- 3 cords wood.
- 25 galls. storm oil.
- 5 galls. boiled oil.
- 5 galls. raw oil.
- 3 galls. machine oil.
- 2 galls. cylinder oil.
- 5 galls. turpentine.
- 9 cases coal oil.

GALLEY GEAR AND PROVISIONS:

- 2 vegetable dishes.
- 2 platters.
- 1 soup tureen.
- 2 sauce pans.
- 1 coffee pot.
- 1 meat saw.
- 1 cleaver.
- 1 butcher knife.
- 1 frying pan.
- 1 water boiler.
- 1 zinc wash tub.
- 3 sacks potatoes.
- 1 sack cabbage.
- 1/2 bbl. salmon.
- 2 sacks flour.
- 1 bread tank for lifeboat ready filled.

- 1 lb. mustard.
- 1 lb. pepper.
- $\frac{1}{2}$ lb. allspice.
- $\frac{1}{2}$ lb. cloves.
- $\frac{1}{2}$ lb. cinnamon.
- $\frac{1}{2}$ lb. nutmeg.
- $\frac{1}{2}$ lb. ginger.
- $\frac{1}{2}$ lb. mace.
- $\frac{1}{2}$ lb. sage.

All of the above enumerated store and gear to be of first-class quality and to the satisfaction of the owners' representative and surveyors appointed; said gear, etc., to be delivered on board the vessel at Port Blakeley, Wash., free of all charges.

Any further information required as to dimensions and quality, to be obtained from the Master on board.

Tenders to be submitted to the Manager of the Globe Navigation Company at his office, Globe Block, Seattle, Wash., by noon of Friday, Jan. 3d, 1908, distinctly stating price and time required for the complete delivery of all articles.

The right is hereby reserved to reject any or all tenders.

Seattle, Wash., Dec. 28th, 1907.

SPECIFICATIONS FOR NEW SAILS.

Am. 4 Mst. Schr. "WILLIS A. HOLDEN."

Tenders are requested for the following sails complete in readiness to bend and set:

One main sail and one mizzen sail of the following dimensions and description:

Head, 33'8".

Foot, 39'6".

Luff, 64'6".

After-leach, 77'9".

Sails to be made of No. 0 Canvas (Woodburg or Mount Vernon), hand sewn with 8-ply twine, all lining cloth, tabling, strengthening and tongue pieces also of No. 0 canvas except the lining on the after-leach, which is to be No. 1, the width of lining on mast and reef bands to be $\frac{1}{2}$ cloth, on head and foot $\frac{1}{3}$ cloth, on after-leach full cloth.

Reefs and clews to have tongue piece and to be double stitched on lining cloths.

Tabling on after-leach to be sewed up. All stitching on bands over seams to be through double cloth.

All eyelet holes to be brass lined and mast rope to be covered with leather across eyelet holes.

SIZE OF ROPE AND FITTINGS:

Leach rope 6" manila.

Luff rope 4" manila.

Foot rope $\frac{5}{8}$ " flexible wire.

Head rope $\frac{9}{16}$ flexible wire.

Both head and foot ropes to be served and covered.

Clew and reef rings $1\frac{1}{4}$ galv. iron.

Head rings 1" galv. iron.

Throat rings $\frac{7}{8}$ " galv. iron.

Tack rings $\frac{3}{4}$ " galv. iron.

Thimbles on leach rope to be $1\frac{3}{4}$ " galv. forged iron.

Reef points to be loose, two sets in each sail.

ONE INNER JIB.

To be made of No. 1 Canvas sewed with 8-ply twine, canvas on head to be turned in $3\frac{1}{2}$ " and lining cloth to go all around sail.

All eyelet holes to be brass lined and rope covered with leather across eyelet holes.

DIMENSIONS OF SAIL:

Head, 73'.

Foot, 26'9".

After-leach, 58'6".

After-leach to be covered to 38'.

Foot to be covered to 12'.

SIZE OF ROPE, ETC.

Bolt ring, $3\frac{1}{2}$ " manila.

Clew ring, $\frac{7}{8}$ " galv. iron.

Head, $\frac{7}{8}$ " galv. clew iron.

TWO OUTER JIBS:

To be made of No. 2 canvas sewed with 8 ply twine, canvas on head to be turned in $3\frac{1}{2}$ ", lining cloth to go all around sail.

Eyelet holes to be brass lined and rope covered with leather across eyelet holes.

DIMENSIONS OF SAILS:

Head, 79'.

Foot, 30'3".

After-leach, 55'6".

After-leach to be covered to 34'

Foot to be covered to 15'.

SIZE OF ROPE, ETC.:

Clew ring, $\frac{7}{8}$ " galv. iron.

Bolt rope to be $3\frac{1}{4}$ " manila.

These sails to be made complete and delivered when finished, on board the vessel, which is now reloading her cargo at Port Blakeley; all workmanship and material to be of the best and to the satisfaction of the owners' representative and surveyors appointed.

Tenders to be submitted to the Manager of the Globe Navigation Company, at his office, Globe Block, Seattle, Wash., by noon of Dec. 31st, 1907, distinctly stating price for each sail separately and time required to make delivery of same.

The right is reserved to reject any or all tenders.

Seattle, Wash., Dec. 28, 1907.

FINAL REPORT OF SURVEY.

Am. Schr. "WILLIS A. HOLDEN."

This is to certify that we, the undersigned, have this day held final survey upon the completed repairs to the above-named vessel and find that all recommendations made by us in survey report dated Dec. 14th-24th, 1907, have been carried out to our satisfaction, with the exception of the following items, which in no way affects the seaworthiness of vessel and can be partly done by crew on voyage and remainder completed on arrival at Shanghai:

Straighten sheer poles.

Reserve damaged parts of lower rigging.

Repair ratlines.

Calk topsides above main deck in way of galley and half-deck.

Fit new mast coat to foremast.

Make new wooden cover for ship's boat.

Fair after boat davits.

Paint around topsides where chafed.

Renew stanchions in poop rail.

Fit new engine-room, galley and room doors forward, wash and paint out rooms, etc.

In our opinion the vessel is now in a good and seaworthy condition, being fit to carry dry and perishable cargo.

Respectfully submitted,

F. WALKER,

Surveyor for Owners.

S. B. GIBBS,

Surveyor to S. F. Board of Marine Underwriters.

Port Blakeley, Wash., Jan. 15, 1908.

[Endorsed]: Ex. 3. Preliminary and Final Reports. Am. Schr. "Willis A. Holden." Pt. Blakeley, Dec. 14-24-07-Jan. 15-08. Filed A. C. Bowman, U. S. Commissioner, Western District of Washington. No. 3617. United States District Court, Western District of Washington, Northern Division. Chas. Nelson Co., Libellant, v. "Willis A. Holden," Respondent. Filed in the U. S. District Court, Western Dist. of Washington. Jan. 27, 1909. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

No. ——. U. S. Circuit Court of Appeals, for the Ninth Circuit. Exhibit 3. Received May 17, 1909. F. D. Monckton, Clerk.

No. 1720

IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

THE GLOBE NAVIGATION COMPANY, LIMITED,
As Claimant of the Schooner "WILLIS A.
HOLDEN," Her Tackle, Apparel, and Furniture,
and a Cargo of Lumber Consisting of 1,500,000
Feet, Board Measure,

Appellant,

vs.

THE CHARLES NELSON COMPANY, A Corpora-
tion, JOHN RANSELIUS, Captain, L. C. HAN-
SON, First Mate, R. D. MacRAE, Second Mate,
the First Assistant Engineer and the Second As-
sistant Engineer of the Steam Schooner "Charles
Nelson," Libelants, and H. SMITH, V. ANDER-
SON, W. SIRENS, K. KARLSON, B. TUP, O.
HOLMSTROM, G. GUTTENBERG, H. JOST-
MAN, A. SUNKWIST, E. EVANS, and W.
LINE, Sailors, FRANK WESTON, JOHN BA-
BERG, and JAMES McCUE, Firemen, EMIL
SODERBERG, and PAUL M. MOSIER, Oilers,
J. WUNDERLICH, Steward, A. J. HOWELL,
Cook, C. DAUCHERT, Cook's Boy, and AN-
DREW DOE, Cabin Boy, of said Steam Schooner
"Charles Nelson," Intervening Libelants,

Appellees.

Appellant's Brief on Appeal

H. R. CLISE,
GEO. H. KING,
Proctors for Appellant.



No. 1720

IN THE

**United States
Circuit Court of Appeals**

FOR THE NINTH CIRCUIT

THE GLOBE NAVIGATION COMPANY, LIMITED,
As Claimant of the Schooner "WILLIS A.
HOLDEN," Her Tackle, Apparel, and Furniture,
and a Cargo of Lumber Consisting of 1,500,000
Feet, Board Measure,

Appellant,

vs.

THE CHARLES NELSON COMPANY, A Corpora-
tion, JOHN RANSELIUS, Captain, L. C. HAN-
SON, First Mate, R. D. MacRAE, Second Mate,
the First Assistant Engineer and the Second As-
sistant Engineer of the Steam Schooner "Charles
Nelson," Libelants, and H. SMITH, V. ANDER-
SON, W. SIRENS, K. KARLSON, B. TUP, O.
HOLMSTROM, G. GUTTENBERG, H. JOST-
MAN, A. SUNKWIST, E. EVANS, and W.
LINE, Sailors, FRANK WESTON, JOHN BA-
BERG, and JAMES McCUE, Firemen, EMIL
SODERBERG, and PAUL M. MOSIER, Oilers,
J. WUNDERLICH, Steward, A. J. HOWELL,
Cook, C. DAUCHERT, Cook's Boy, and AN-
DREW DOE, Cabin Boy, of said Steam Schooner
"Charles Nelson," Intervening Libelants,

Appellees.

Appellant's Brief on Appeal

STATEMENT.

That on November 30, 1907, the four masted schooner Willis A. Holden of which the Globe Navigation Company, Limited, was the owner and A. L. Laur, Mas-

ter,, laden with lumber, left Willapa Harbor, Washington, bound for Shanghai, China. That she met with rough weather losing her rudder and partly shifting her deck load, and in consequence thereof was endeavoring to make a harbor in Puget Sound.

That about 9 o'clock in the morning on December 12, 1907, the ship was in the position marked "A" on respondent's "Exhibit 1," being well within the Straits of San Juan de Fuca and southwest of Sombrio Point on the Vancouver shore, with a moderate wind and with a fresh breeze from the east-northeast, weather clear, with a slight haze over the American shore at times. The vessel was then heading for the Vancouver shore and Captain Laur endeavored to get her about so that she would head for the American shore, failing to do this he lowered his forward sails and set his after sails to windward and in this condition the vessel gathered sternway and sailed with the east-northeast breeze toward the American shore. At 4 o'clock she was at a part marked "B" on "Exhibit 1," about a quarter of a mile from land to the west of Waddah Island and the conditions of the wind and weather being about the same as in the morning. At 4 o'clock the ship was in about forty fathoms of water and the captain had made preparations to anchor, she having at the time, on board, three anchors and 180 fathoms of cable. At this time the ship had a signal flying saying "want immediate assistance, can you give any assistance in the way of?"

At 4 p. m. of December 12, the master of the Holden sighted the steam schooner "Charles Nelson" coming into the Straits of San Juan de Fuca, and between 4 and 5 o'clock she was along side. (Trans., p. 160.) The captain of the Holden then bargained with the captain of the Nelson that the latter would tow the Holden to Port Townsend. The Holden's captain was particular to stipulate before he took the tow line aboard, that the job was to be one of towing, and not a salvage charge. (Trans., pp. 163 and 225.) To this the Nelson's captain agreed (Trans., p. 163) and with this understanding the "Nelson" took the "Holden" in tow. There was a moderate wind from the northeast, which held until about 11 p. m. and the "Holden" towed easily and well. (Trans., p. 167.) Between 11 and 12 that night the wind shifted to the southwest blowing squally and strong. This made a following or stern wind for the "Holden" causing her to sheer and the tow line parted close to where it crossed the "Nelson's" taffrail, the chaffing gear being cut through. (Trans., p. 170.) The vessels were then in the position marked "C" on the chart (Exhibit 1). After some delay the towline was again passed between the ships, and the "Nelson" started towing, about 4 a. m. The wind strong from the southwest, and squally. Before starting in to tow, after the line was made fast, the captain of the "Holden" called to the captain of the "Nelson" to tow towards the American shore, where

there was smooth water. (Trans., pp. 172, 229, 236.) This the Nelson's captain did for about twenty minutes, standing southeast, which brought the wind on the starboard bow of the "Holden" and she towed well. However, for some reason not given, the "Nelson" shifted her course, so as to bring herself and the "Holden" before the wind, and the "Holden" again sheered, the wind being astern, and the tow line slackened. The "Nelson" then started, full speed, across the "Holden's" bow, taking up the slack line, which suddenly parted, carrying away a chock on board the "Holden." (Trans., pp. 172, 174.) The vessels were then in the position marked "E" on the chart. (Ex. 1.) A line was again passed between the two vessels, which, in the meantime had drifted to the point marked "F" on the chart (Ex. 1), and again the captain of the "Holden" told the captain of the "Nelson" to head for the American shore. (Trans., pp. 175, 229.) This he did, and all went well until, off Ediz Hook, near Port Angeles Harbor, the captain of the "Nelson" again brought the vessels before the wind, and in trying to cross the bow of the "Holden" the tow line again parted. The tow line was again passed, and without further incident the "Holden" was brought to an anchorage in Port Angeles Harbor, at about 11 a. m. on December 13th. There the "Nelson" left her. (Trans., pp. 176-178.)

The Chas. Nelson Company libelled the schooner

“Holden,” claiming salvage services on ship and cargo for \$20,000.00. The crew of the “Nelson” also filed an intervening libel for alleged salvage services. The Globe Navigation Company Limited claimed the schooner “Holden” and filed an answer to both libels. On the issues thus made the case was referred to a commissioner to take testimony, and on a final hearing the Court entered a decree, awarding the Chas. Nelson Company \$3500.00; the captain \$300.00; the first mate \$100.00; the second mate \$50.00; the first assistant engineer \$50.00; the second assistant engineer \$50.00, and to the intervening libellants (the crew) \$40.00 each; making a total of \$4850.00. (Trans., p. 374.) From this decree the Globe Navigation Company has appealed.

Since this appeal the Globe Navigation Company Limited has compromised with the intervening libellants, and the decree, in so far as they are concerned, has been satisfied.

Previous to the action, the Globe Navigation Company Limited offered and tendered to the Chas. Nelson Company the sum of \$1000.00, which was refused. (See Replication of Libellants, Trans., p. 31.)

ARGUMENT.

The appellant earnestly contends that the testimony in this case, fairly construed and taken as a whole, shows conclusively:

(1) That at the time the "Nelson" took the "Holden" in tow at 4 p. m. on December 12th the services to be rendered the "Holden" were to be based on a reasonable towage compensation, and were not to constitute a salvage charge.

(2) That only moderate weather was encountered up to midnight of December 12th and thereafter nothing unusual for that time of the year was experienced, and only such weather conditions were encountered as were within the reasonable expectations of the two masters at the time the services of the Nelson were accepted.

(3) That whatever trouble arose during the night of December 12th and 13th after the wind changed to the southwest, was chiefly due to poor seamanship on the part of the "Nelson's" captain and his obstinate refusal to obey the request of the captain of the "Holden" to steer for the American shore.

I.

That the "Holden" was in no immediate danger at 4 p. m. on December 12th when the "Nelson" came along side, seems clear beyond controversy. Captain Laur of the "Holden" states repeatedly, that where he was picked up by the ".....," he had good anchorage and a safe place to lie in any kind of weather. His statements in this respect were clear and well considered, whether upon his direct examination or upon cross-exam-

ination. It also appears that the anchorage was good at that point and capable of holding the vessel with the anchors and chains on board in any weather. (Trans., pp. 157, 158.) This testimony of the captain is supported by that of Mr. Gove, an old tug-boat master. (Trans., pp. 305, 324, 325.) Captain Gove's testimony is confirmed by Captain Manter, a witness on behalf of the libellant. He says: "Well I should say the vessel could anchor there, I have seen vessels anchored there with a southerly wind. It is pretty fair holding grounds." (Trans., p. 337.) This testimony of these experienced captains is supplemented by that of Mr. Haley where he testifies that the sister schooner of the "Holden," with the same kind of anchorage, as the "Holden" had, rode out the typhoon where the wind reached a velocity of 100 to 110 miles an hour. (Trans., pp. 238-240.) Now the greatest velocity the libellant contends the wind reached on the night of the 13th was 52 miles an hour and that only for a few minutes. An examination of the chart (Ex. 1) will also show that, had the "Holden" anchored where she was at 4 p. m. December 12th, she would have been in the lee of the land from any southerly or easterly wind.

Mr. Wonderlick, one of the libellant's chief witnesses, in describing the weather conditions, says:

"There was a fresh breeze blowing," and a fresh breezes he describes: as, "a wind that you can sail a boat in a good quick way." He describes the condition of the sea; as, "having a nice swell." (Trans., p. 52.)

Captain Lauer being recalled described fully the weather conditions when the tow began. (Trans., pp. 250, 251.) When it came time to put a line aboard, the "Nelson" came close enough to the "Holden" to heave the line; if there had been any wind or any great sea that could not have been done.

At the time the "Nelson" came in sight, then the captain of the "Holden" had the choice of either taking assistance, or trusting to his ground tackle, and riding out the night where he was. Either course would have been good seamanship. (See testimony of Captain Gove, Trans., p. 325.)

It rested with the captain of the "Holden" to say whether he would accept assistance offered or not. In making his decision it is clear beyond question that he would have preferred to, and would have ridden out the night where he was, which he considered a safe holding ground, and under the lee of the American shore in case of a southwest gale, unless he could get a tow at a reasonable rate. He refused absolutely to take the "Nelson's" tow line aboard his ship until he had first given the "Nelson's" captain to understand that the job was to be done at towage and not salvage rates. Whatever mental reservations the captain of the "Nelson" may have indulged in, he knew, when he started to tow the "Holden" that the latter's captain understood he was being towed at ordinary towage rates. This we think is

clearly shown by the evidence of all of the witnesses, and is borne out by the testimony of Captain Ranselius Trans., p. 130) where he says :

“Then after I came the second or third time I forget now which, the captain sang out something about towage. All of my attention was paid to the steamer to get her along side of the ‘Holden’ and I sang out to the captain of the ‘Holden’ through the megaphone that I was going to tow him and we passed him the line.”

Ranselius, as may be seen from the answer to this question and from the general trend of his testimony on this matter of towage, avoids the point and fails to give a direct answer, but McRae, the second mate of the “Nelson,” testifies that he heard the “Holden’s” captain say: “I want you to understand it won’t be a salvage job.” (Trans., p. 87) In fact all the witnesses who heard the conversation agree that the captain of the “Holden” stipulated that the job should be at towage rates.

James McCue only heard the conversation between the captains when approaching Port Angeles. (Trans., pp. 45, 46.) John Wonderlick was not interrogated on this point. (Trans., p. 50.) Alexander Lindgren (Trans., p. 58) heard only part of the conversation, where one captain asked the other if he wanted a tow, and the answer was, yes. R. D. McRae details the conversation between the captain (Trans., p. 87) and says: He heard the captain of the “Holden” say to the captain of the “Nelson” that “I want you to understand that it won’t

be a salvage job," to which the captain of the "Nelson" replied, "that he would not make any agreement." The testimony of this witness is important, because it corroborates the testimony of the captain of the "Holden" and contradicts the testimony of the captain of the "Nelson" where the latter in detailing this conversation (Trans., p. 129) denies positively any statement of the captain of the "Holden," with regard to its not being a salvage job; Mr. Shepherd was the engineer and not on deck at the time this conversation took place. (Trans., p. 71.) The only other witness for the libellant is Mr. Hanson and he details the conversation (Trans., pp. 62-63) as he remembers it, that there were only two or three sentences passed between the two captains.

Either Captain Ranselius of the "Nelson" clearly understood that it would be a tow, or else he deliberately deceived and mislead Captain Laur of the "Holden" into so thinking. The testimony clearly shows this. Captain Laur for appellant testified:

Q. Say what you said to the captain?

A. I said, "Captain, I understand this is to be a towage job, and not a salvage job."

Q. Very well.

A. "I am in a safe position here, and I can let go anchor at any time.

Q. And your recollection is clear that is what you said?

A. Absolutely yes.

Q. What did the captain of the "Nelson" say?

A. He did not answer the first time.

Q. What then happened?

A. Then I went forward and I had my megaphone along and I says, "Captain, I don't want to take your line except you consider this a towage job and not a salvage job."

Q. Did he answer that?

A. Yes.

Q. What did he say?

A. He said: "All right; I will tow you." (Trans., p. 163.)

See also the testimony of witness Carlson, the mate of the "Holden," (Trans., p. 225) where he says Ranselius said, before Laur would take his line, "all right I will tow you." Captain Ranselius does not remember this, but witness L. C. Hansen, the first mate of the "Nelson" has a better recollection, for he says:

Q. What, if anything, did the captain of the "Holden" say about salvage or towage?

A. I did not hear him say anything about salvage. Sometime after his getting the hawser he said something to the effect about that it would be a tow. Our captain said, "All right, I will tow you."

Q. That is while he was towing?

A. No, sir, after he had been getting the hawser—while we were in the act of getting the hawser on to the "Holden." (Trans., p. 112.)

Can it be said, taking the conversation of the two captains in its entirety that, when Ranselius said "All right, I will tow you," Captain Laur was not fully justified in believing that it would be a towage, and not a salvage service?

II.

When the "Nelson" took the "Holden" in tow, the Commander of the "Nelson" knew the "Holden" was rudderless and would be more difficult to tow than a vessel under control of a rudder. He impliedly convenanted that he had the necessary facilities and skill to handle a vessel under such conditions with reasonable safety and in ordinary winter weather in the seas where his course lay. The weather on December 12th and 13th was not extraordinary winter weather for the Straits of Fuca.

The testimony of Mr. Shepherd (Trans., pp. 71, 83) will show that during the night of the 12th and 13th no such unusual weather conditions prevailed, as to compel him to slacken speed on account thereof. His testimony also shows, that coming in from Tatoosh the weather conditions were normal, because the "Nelson" was making full speed. The weather conditions are best illustrated by the fact that when it was necessary to get a towline on board one or the other of the vessels, the "Nelson" would steam along side the "Holden" and throw a heaving line.

The reason the "Holden" was unmanageable after 1:30 a. m. on the 13th was owing to the change of the

wind, and because the captain of the "Nelson" failed to change his course accordingly.

We believe that a reading of all of the testimony shows that the morning of the 13th was not an unusually stormy one, that the wind at times did blow in squalls, is quite true, but it at no time approached a gale except once and then only for five minutes.

The Tatoosh Weather report (p. 149) shows the average hourly velocity of the wind to have been 25.5 miles. That the weather on the night of the 12th and 13th was not unusual is clearly shown by the testimony of the chief engineer of the "Nelson" where he says (Trans., pp. 82 and 83):

Q. "As I understand it, from your log here, the machinery was in good condition and good working order?"

A. Yes, sir.

Q. And that was true during all this time that you were towing?

A. All the time we were towing. You will see everything is marked "*ALL WELL.*"

Q. And you went about three-quarters speed during the entire time of the towage?

A. Yes, sir, all the time we had to tow. Full speed is considered one hundred and twenty revolutions a minute, running light. We run from 85 to 90 and 91."

And on page 84, he says:

Q. "Against a head wind she would turn up these revolutions?"

A. No, sir, in fine smooth weather she will make 120 revolutions, whereas if she was bucking she would make 114 or 115 against a northwest wind."

This clearly shows there were no racing engines or other indications in the engine room of heavy weather or anything out of the ordinary other than a tow.

The captain of "Holden" was able to observe the shore at all times during the night and marked his course on the chart at the time. The nearest any witness places the "Holden" to the Vancouver shore, was about a mile and a half, most of the witnesses place it further; that she was in that position was altogether the fault of the "Nelson." The "Nelson" should have kept close to the American shore, not only for the protection it would have afforded from the wind, but it would have been better seamanship so to have done, because the "Holden" would have towed better under these conditions.

It must, we think, be also apparent to the Court from the testimony that the various positions in which the "Holden" was placed that night were in a large measure due to the incapacity and unseamanlike conduct of the commander of the "Nelson." As long as the "Holden" was kept "head to wind" she towed easily and behaved well, but as soon as the wind changed, about midnight, it never appeared to have entered into the mind of the captain of the "Nelson" that he should change his course to

meet it, and that, had he done so, the two ships would have been in the same relative position as to the wind that they were before. This is clearly shown by the testimony of Captain Gove (Trans., pp. 305, 307, 309), a seaman of ripe experience, who testified that good seamanship required the Nelson's captain to bring the heads of both vessels to the wind, and hold them there, even if he could make no actual progress, until the blow moderated.

Captain Laur of the "Holden" also repeatedly indicated this line of conduct to the captain of the "Nelson," as appears by Captain Ranselius' own testimony (Trans., p. 134) where he says: "After we started to tow, the captain of the "Holden" at that time sung out to me, to try and tow over to the American side," but without effect. On the contrary, the "Nelson's" captain persisted in keeping the vessels before the wind, and in a mistaken effort to counteract the yawing of the "Holden," threshed across her bow under full headway, carrying away her head gear and inevitably breaking the tow line. All of this could have been avoided had he brought the vessel and her tow toward the American shore, as repeatedly requested by Captain Laur to do, and if he could make no headway at least, hold the vessels where they were until the wind moderated. See in this connection Captain Ranselius' testimony (Trans., p. 132) where he says: "Before the hawser parted I had to turn around with her towards the Vancouver side"

and again (Trans., p. 134) "We turned the 'Nelson' around about three times in the Straits, and the only way to manage it was, I had to turn around to the Vancouver side." With the vessels heading to the Vancouver side they were directly before the wind and in the worst position possible for towing the "Holden," and yet, Captain Ranselius gives no explanation whatsoever of this extraordinary maneuver on his part.

III.

Either as a towage or a salvage proposition, we contend the amount awarded by the trial Court was much too large. In its answer the claimant offered a Thousand Dollars as compensation for the work done by the "Nelson." In doing this there was taken into consideration what was a reasonable risk, and reasonable wear and tear on the hawsers employed by the "Nelson" in doing the towing, notwithstanding there was no testimony introduced by the libelant to show the value of either of the hawsers used or to show the lessened value thereof, by reason of having been used in this service. We believe this offer was a liberal one under the circumstances.

The value of the schooner "Holden" and her cargo was Fifty-five Thousand Dollars. She was a lumber schooner, with no passengers on board, and there is no contention that the lives of the "Holden's" crew were ever in danger at any time. The utmost claim made by the libelant is that there was a possible danger to the schooner herself.

The value of the "Nelson" was Fifty Thousand Dollars, and the captain states that he had twelve or fifteen passengers aboard, although there is testimony to the effect that she has no passenger accommodations. The question of whether or not there were any passengers on board the "Nelson" at the time, is to our mind exceedingly doubtful. The only testimony is that of Captain Ranselius, who seems uncertain and does not remember the number of passengers. Walker, who examined the vessel closely with a view to ascertaining her value for this particular suit testifies (Trans., p. 293): "that he saw no accommodations for passengers." It would have been easy for the libelants to have procured the passenger list for that particular voyage or even a copy of it, but they not only failed to do this, but failed to question any other of the witnesses among the officers and crew, except the captain, as to whether there were any passengers or not.

The "Nelson" was never in any real danger at any time. At no time during the night in question was the "Nelson" or her officers or crew (or passengers, if she had any passengers) in the slightest danger. She was always under power and in control of her officers, and could at any time, on casting off the "Holden" have steamed where she would. The utmost of their contention is that she might have become entangled in the jury rudder, when she took the "Holden" in tow on the evening of the 12th, but in the condition the sea was in, with

little or no wind at that time, it would have been the rank-est of bad seamanship for her to have endangered herself at that time. The only other time they contend she was in danger was when the hawser broke at about 12:30 on the morning of the 13th and it was dangling to the "Holden." The "Nelson," however, knew just where this hawser was and by approaching from the side it was easily to be avoided. We think, therefore, that there is no testimony to support a contention that "Nelson" was ever in any danger.

Looking at the testimony as a whole, it seems apparent to us that the action of the captain of the "Nelson" after the change of the wind about midnight and when it commenced to blow hard from a quarter that brought the wind astern of the "Holden," were largely occasioned by his unfamiliarity with the effect of the wind on sailing vessels. As every mariner knows the master of a sailing vessel depending entirely upon the wind for his motive power, acquires a greater facility in maneuvering his vessel, both to get the most from the wind and to insure his vessel safety in storm, than the master of a steamer, who is largely indifferent to the wind, and does not depend upon it, recognizing it perhaps as a hinderance to his progress when it blows dead ahead, but otherwise giving little attention to it. The affect of the heavy wind on the "Holden" when it came astern was to make her yaw and thresh from side to side, whereas if she had

been gotten in such a position that her head would be toward the wind, the wind would have blown past her, and instead of giving her a tendency to yaw, would have had a tendency to steady her. There is no doubt that Captain Laur of the "Holden" knew this, and that accounts for his repeated and earnest request to the Captain of the "Nelson" to head toward the American shore, requests which the Nelson's captain seemed to have been unable to comprehend the necessity for.

The case of "*City of Puebla*," 79 Fed. Rep. 982, was a rescue in the same waters. The "*City of Puebla*" was a passenger steamer with a large number of passengers and would in the opinion of the Court have been wrecked on the Flattery rocks, if a rescue had not been made. A rescue was made under conditions which require a much greater effort than is shown in this case. In this case, it was never at any time necessary to lower a boat to carry the line from one vessel to the other. In every instance the two vessels could approach each other so that a line could be thrown from one to the other. In the "*City of Puebla*" case, a sea was running so heavily that at times the Puebla would be shut off from the sight of the men in the "*Wanderer*," the rescuing vessel. The Court in the Puebla case allowed a little less than four per cent. upon the appraised value of the Puebla for the rescue of the ship, and its load of passengers. The Puebla was towed from Flattery Rocks to Port Townsend,

while the "Holden" was towed from a point inside Cape Flattery to Port Angeles, only about half the distance, and none of the circumstances would entitle the libellants to so large an award in the case at bar as was given in the Puebla case. We think our offer of \$1000.00 a most liberal one.

In arriving at the compensation to be awarded to the libellant in this action we would respectfully ask the Court to take into consideration the damage done to the "Holden" by the loss of her headgear, etc. This damage according to the testimony of Mr. Walker which was not contradicted (Trans., pp. 351-354) amounted to the sum of Three Hundred Dollars. We think that the rule that this sum should be deducted from any award granted to the libellant is well established. (See *The Lamington*, 86 Fed Rep. 685.)

We recognize that an appellant Court hesitates to interfere with an award made by a trial Court when the amount of the award is wholly within the discretion of the trial Court, but we believe that such hesitancy should only occur when the trial Court has had the opportunity to personally see the witnesses and observe their conduct on the witness stand. In this case the trial Court did not see a single witness, and simply having read the testimony as Your Honors will, was in no better position to judge as to the credibility of the witness than Your Honors. And, for instance, there is nothing in the testi-

mony to warrant the trial Judge's comment concerning Captain Laur.

We respectfully submit that the decree of the District Court should be reversed, and that the libellants (exclusive of the intervening libellants, who have been settled with) should receive such compensation as this Court deems just, based on a towage contract.

H. R. CLISE,

GEO. H. KING,

Proctors for Appellant.



3
No. 1720

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE GLOBE NAVIGATION COMPANY, Ltd.,
Claimant and Appellant,

vs.

THE CHARLES NELSON COMPANY, A Corpo-
ration, et al,
Libelants and Appellees.

Appellees' Brief on Appeal

KERR & McCORD,
Proctors for Libelant Appellees.

318 MUTUAL LIFE BUILDING
SEATTLE, WASH.

THE HOLLY PRESS 66-67 UNION BLDG.

FILED



No. 1720

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE GLOBE NAVIGATION COMPANY, Ltd.,
Claimant and Appellant,

vs.

THE CHARLES NELSON COMPANY, A Corpo-
ration, et al,
Libelants and Appellees.

Appellees' Brief on Appeal

Appellant's "Statement" is too partisan to be of any value to this Court. Judge Hanford found the facts to be as follows:

1. On November 27, 1907, the "Holden" sailed from Willapa Harbor for Shanghai, with a cargo of 1,294,000 feet of lumber.

2. On November 29th the "Holden" encountered a heavy storm, her cargo shifted, giving her a list to port, her rudder was carried away and a part of her deck load was jettisoned.

3. With a makeshift for steering gear she was navigated into the Straits of San Juan de Fuca, where she was rescued by appellees' steam schooner on December 12, 1907.

4. That from November 29 to December 12 the "Holden" was buffeted by a "succession of storms almost continuous."

5. That on December 12 the weather was squally, the wind shifting from different points of the compass and varying in velocity from 29 to 50 miles per hour, the sea was rough and the barometer falling.

6. When the "Nelson" came to her relief, the "Holden" was drifting, her jury rudder having been broken and she had been flying signals of distress all day. It was then 4 o'clock P. M. and darkness was coming on.

7. The "Holden's" position was less than one mile from a rocky shore southeast of Waddah Island, the depth of water 40 fathoms.

8. When the "Nelson" came within speaking distance, the "Holden's" captain made a request to be towed to Port Townsend and inquired what

amount would be exacted as compensation. The captain of the "Nelson" responded, offering to take the schooner in tow but refused to fix any price for the service. A tow line was then passed from the steamer and made fast to the bitt of the schooner. The "Nelson's" captain proposed to pull the schooner by her anchor chain, to save his tow line from wear but the captain of the "Holden" objected to the delay which would have been necessary to put the chain in order for that use.

9. The task performed by the "Nelson" was difficult on account of the state of the weather and sea and the helpless condition of the schooner. The "Nelson" struggled with the "Holden" for twenty hours, parting a new 10 inch hawser three times.

10. The "Nelson" was not seeking employment in the towing business but was *en route* from San Francisco to ports of Puget Sound, having on board a cargo and a number of passengers.

11. The contention that the schooner was not in peril is completely refuted by the fact that the schooner was adrift near a rocky shore, signalling for immediate assistance; the "Nelson" was a passenger schooner; the wind blew a gale of 50 miles per hour; that it would have been inexcusable for the "Holden's" captain to have risked the loss of his vessel, her cargo, and the lives of her crew by refusing assistance, and that the captain of the "Nelson" re-

fused positively to parley or bargain with him for a stipulated sum.

12. The schooner was in fact rescued from a situation of peril, and there was no negligence or lack of skill in handling the unmanagable heavy ship in the tempestuous weather encountered. (See Record 367-370.)

ARGUMENT.

Appellant contends that there was a contract of towage.

At the time the "Nelson" entered the Straits a southeasterly gale of 50 miles per hour was blowing on the outside, with a heavy swell setting into the Straits. It was so rough that the "Nelson" was compelled to take the north passage instead of the usual one between Duncan Rock and Tatoosh. Soon after entering the "Nelson" discovered the "Holden" drifting in close proximity to the rocky shore of Waddah Island, flying signals of distress, which called for "immediate assistance." The "Nelson" responded, and on approaching the "Holden" discovered that she was helpless, her rudder gone, her jury rudder a wreck, parts of which were floating astern, attached to wire cables which menaced the safety of the rescuing tug. She had a heavy list to port and her head gear—

three top stays and one stay—had been carried away. She had drifted into the Straits on the morning of the 12th, and was carried by the tide (See Ex. 1) up the middle of the Straits to a position opposite Sambrio Point. She had then drifted to a point within two or three miles of the Vancouver Island shore. Her captain was unable to bring her about and by shifting sail actually sailed her *stern foremost* back to a point three-fourths of a mile southeast of Wadah Island, where she was rescued.

It is true there is a sharp conflict in the testimony as to what was said by the captains of these vessels at the time the tow line was passed. The average velocity of the wind on the 12th was 29 miles an hour. "Barometer at 5 P. M. was 29.40—Sea rough." (Rec. p. 148.) There was a heavy ground swell rolling in from the Cape (See Record, Ev. McCue, 44; Wonderlick, 52; Lindgren, 59; Sheppard, 72; McRae, 86; Hansen, 110; Ranselius, 130.) The "Nelson" maneuvered two or three times, before she succeeded in passing a heaving line to the "Holden." As to what transpired, Captain Ranselius testified: "I asked the captain if he wanted any assistance. He said 'Yes, I want you to tow me to Port Townsend.' He asked me how much I wanted for it. I told him I could not make a bargain,—I could not state now; *if he wanted any assistance I would do so, and if he did not want it to say so and I would go on my way.* He told me then he had better take assis-

tance and for me to tow him. I told him 'all right.' We got all hands on deck, took our new 10 inch line, made one end fast to our own bitt and got another 3 inch line ready to bend on to it and steered toward the "Holden." * * * We made two or three attempts to get alongside of him; he had some wreckage floating on his weather side,—a spar or planks with wire attached to it. I did not know how far that was drifting toward the weather side so I steered as close as I could towards him. Then I rounded up and backed down towards him, but the wind threw the bow back again and I think it was two or three times we attempted to get a heaving line aboard him. I told the captain to shackle the hawser with his big shackle on to his anchor chain so that I could tow on that. He told me that would take a couple of hours,—that the best he could do was to fasten the line to his bitt. I told him 'all right.' The captain of the "Holden" *did not* say to me it was only to be a towage service, nor that it was to be a towage not a salvage job. As I came about the second or third time the captain sang out something about towage, but all my attention was paid to the steamer to get her alongside of the "Holden" and I sang out through the megaphone that I was going to tow him and we passed him the line." (Record, pp. 127 et seq.)

Lindgren (Record p. 59) testified: "The captain of the "Nelson" asked him if he wanted any assistance. He said 'yes.' We were about an hour getting our line aboard."

Mate McRae (Record p. 87) testified: "We came alongside and our captain spoke to him and wanted to know if he wanted any assistance. He said 'Yes, will you tow me to Port Townsend?' He said 'I will make no agreement with you. I cannot make no agreement.' Afterward he says 'I want you to understand that it won't be no salvage job.' Our captain says 'I cannot make any agreement with you at all as to that. If you want me to help you I will, if not, say so and I will proceed. If you want to take my line all right. Do you want to take my line?' He says 'Yes, I will take your line.' "

Mr. Hanson testified (Record p. 111):

The captain of the "Nelson" asked the captain of the "Holden" if he wanted assistance and he said he wanted to be towed to Port Townsend, but there was no price to my knowledge or in my hearing agreed on. The captain of the "Nelson" told him he would tow him to Port Townsend, but he would make no bargain,—he would leave it to be settled later on. * * * There was the swell and wind and several things to contend with. It took us all of an hour to get the hawser on board.

Captain Lauer of the "Holden" testified (Record, p. 162) as follows:

"I asked Ranselius 'How much do you want to tow me to Port Townsend?'

Q. What did he say?

A. Well he said 'I don't want to make any agreement.' "

At page 99 of the Record Lauer swears, on cross-examination that "No bargain was made." On reading his evidence this Court will be impressed with the truth of this observation of Judge Hanford: "There is a noticeable contrast between the anxiety of this man at the time and his bravado as a witness."

It is not pretended by counsel that any towage *price* was mentioned or discussed. No doubt Captain Lauer would have preferred to have made a towage contract. It is agreed by both captains that Ranselius refused to contract.

Upon the admitted facts, under the authorities appellees have a valid salvage claim.

II.

It is contended that there was nothing unusual in the weather conditions which prevailed during the night of December 12 and 13. Under this division of appellant's argument an attempt is made to minimize the service rendered. The statement that "the weather on December 12 and 13 was not extraordinary winter weather for the Straits of Fuca" is not only idle,—it is foolish. The mean average velocity of the wind for twenty-four hours, as shown by the weather report, was 29 miles, the maximum velocity was 52 miles an hour. The report of the weather observer shows that the wind during the hours the "Nelson" was engaged in rescuing the "Holden," blew from all points of the compass; that,

to use the words of the captain of the "Holden," it was the "dirtiest night ever seen in all my experience as a sailor."

The testimony of the captain and crew of the "Nelson" showed that she got under way with the "Holden" at 4:50 P. M. December 12; that until midnight, when the wind greatly increased, they proceeded reasonably well; that at 12:30 A. M. of the 13th the wind changed to the west, increased to a gale, with snow and rain. The night was dark, with a heavy sea. The "Holden," according to the testimony of all the witnesses, was absolutely unmanagable and sloughed about in every direction. She turned the "Nelson" completely around three times in the Straits. The "Nelson" was a powerful vessel with 890 horse power. (Record, p. 137.) She was towing the "Holden" with about 160 fathoms of 10 inch line. At 1:20 A. M. of December 13th, the "Nelson's" new ten inch line parted at the towing bits of the "Nelson." The captain of the "Holden" was requested to heave it aboard, but not having steam up in his donkey was unable to do so. Thereupon the "Nelson" maneuvered, endangering herself, not only by contact with the floating jury rudder but with the floating 10 inch tow line then attached to the "Holden" and succeeded in passing to her the 6 inch tow line. This was adjusted for the purpose of holding her until the 10 inch hawser could be secured. The position of the vessels was then about two miles off

Vancouver Island, near Race Rocks. At 3 P. M. the 6 inch line parted. The "Nelson" again went alongside and secured from the "Holden" the 10 inch hawser. At about 5 A. M. of December 13th the storm had reached a maximum of 52 miles per hour, when the 10 inch hawser again parted, the vessels being then perilously near Race Rock. One of the witnesses for libellant fixed the distance at three-fourths of a mile. The "Holden" however was again secured and the "Nelson" proceeded with her toward Port Angeles. On rounding Ediz Hook into Port Angeles Bay on the morning of the 13th, the 10 inch hawser was severed for the third time by the swaying and pitching of the "Holden." The "Holden" was again taken in tow and taken to a safe anchorage inside of Ediz Hook. On dropping anchor at that place the captain of the "Holden" stated in the presence of the captain of the "Nelson" and her crew that the night was one of the worst he had ever experienced, and complimented the captain of the Nelson for his heroic and effective service. (See Records, pp. 46, 62, 94, 100, 135.)

That the night was one of the gravest peril and that both vessels were in the greatest danger and that the services rendered by the "Nelson" were most persistent and heroic is manifest from the testimony of the witnesses found at pages 47, 61, 65, 96, 99, 113 to 115, and 126 to 136 of the Record.

It is also contended under this heading that the

captain of the "Nelson" did not maneuver his vessel correctly, and that the tow line was severed on at least one occasion by reason of his lack of skill.

The testimony of Captain Ranselius and of Captains Manter and Lovejoy, two of the oldest tug boat captains of Puget Sound, showed conclusively that the handling of a waterlogged, rudderless laden vessel, like the "Holden," on a night when the wind was blowing in gusts up to 50 miles an hour, was one of the most difficult tasks imaginable and that the captain of the "Nelson" had in fact shown consummate skill in rescuing the "Holden" at all. The evidence showed also that the wind blew from all points of the compass during the night, so that it was utterly impossible to have kept the "Holden" "into the wind" and at the same time headed for the American shore.

From 4 P. M. to 11 P. M. December 12th, the wind was from the northeast; from 11 P. M. until midnight, from the west; from midnight until the storm abated on the morning of December 13th the wind blew from the northwest, reaching a maximum of 52 miles at 4:15 A. M. (See Whittier's Report, Record, p. 148.)

On taking the "Holden" in tow at 5 P. M. the "Nelson" proceeded along the American shore toward Port Townsend until the storm broke after midnight from the northwest. It then became neces-

sary to head into the wind with the tow, that is, to the northwest. It was this necessary maneuver that took the vessels across the Straits of San Juan and ultimately to a position near Race Rocks on the shore of Vancouver Island.

Counsel say "When the wind changed about midnight it never entered the mind of the captain of the "Nelson" that he should change his course to meet it." That is exactly what he did and when the cable parted a second time the vessels were dangerously near the Vancouver shore, and a change of course was *absolutely necessary to save them*. It is this second parting of the hawser that counsel urge was due to bad seamanship. Captain Lauer was asked about it as follows:

Q. "You were in a dangerous position?"

A. I was in a dangerous position, and it just depends on the wind which way she would go.

Q. And the "Nelson" came back in that wind and gave you a hawser the second time and incurred no danger herself? Is that what you mean?

A. No.

Q. She did incur danger?

A. I could not tell you that because that is depending on how the "Charles Nelson" handles. (Record, p. 212.)

Q. Did you think the line parted because of the failure of the "Holden" to steer?

A. The first time I did not think so.

Q. Well, is it not a fact that the failure of the "Holden" to steer had a material effect upon the parting of the hawser?

A. Yes, certainly it effected it." (Record, p. 214.)

We ask the Court to read the statement of Captain Ranselius (pp. 132-135, Record). Then read Captain Lauer (pp. 217-219). Captain Ranselius testifies that on the morning of the 13th, the 6 inch line having been broken and the 10 inch line finally adjusted, the "captain of the "Holden" sang out to me to try to tow over to the American side. "*I told him that I had been trying to do that the whole night.*"

For fifteen hours the "Nelson" had been struggling with the "Holden." The statement of Lauer that the captain of the "Nelson" could have gone over to the American shore "any time he wanted to" is as unreasonable as his conduct in attacking the competency of Captain Ranselius is despicable. When finally towed to a safe anchorage behind Ediz Hook, the then *grateful* Lauer exclaimed "It was a dirty night, and you did well!" (Record, p. 135.)

III.

Finally appellant says: The whole business is fanciful; the "Holden" was in a safe place, and "the "Nelson" was never in any real danger"; "she was always under power and in control of her officers and could at any time on *casting off the "Holden" have steamed where she would.*"

The "Holden" was not "cast off"; had she been her own captain admits she would have been in "grave danger." "There is always certain danger

underneath the Vancouver shore.” (Record, 212-213.)

Mate Hanson testified :“It was as strong a gale as I have ever seen in the Straits.” (Record, p. 115.)

McRae testified that the wind blew fifty miles and that the vessels were so nearly in collision that he ran from his place on the poop to save himself from injury. (Record, p. 94.)

It took fully two hours to get the hawser fast again when it parted the second time near Race Rocks. “We had quite a job getting the 6 inch line on board on account of the wreckage floating on the weather side of the stern, and the broken hawser, the whole length of it, floating from the bow. *I could not tell which way it was leading.*” (Record, p. 133.)

Counsel attempt to dispose of the facts with this flourish: “The “Nelson” knew just where this hawser was and by aproaching from the side it was easily to be avoided.” Captain Ranselius says the wind in the gusts blew 70 miles, with snow and hail. “I kept sounding most of the time, as I could not tell on which side of the Straits I was.”

At all events, it is claimed if the “Holden” had refused aid and anchored at Waddah Island she would have ridden out the gale. The Trial Court found against this contention, and that “*the schooner was in fact rescued from a situation of peril and there*

was no negligence or lack of skill in handling the unmanageable heavy ship in the tempestuous weather encountered."

Appellant's witness, Gove, (Record, p. 305) testified that the shore and bottom at the place where the "Holden" was picked up was "rocky." Captain Manter testified that on account of the low lying land at Neah Bay that the "Holden" at the place they say she could have dropped anchor, would have been as much exposed as if outside Flattery. (Record, pp. 341-2.) Lindgren and Wonderlick, both familiar with that shoreline, testified there was no anchorage. (Record, pp. 53, 64.) Both Captains Manter and Lovejoy say that it would have been bad seamanship for the master of a vessel in the condition of the "Holden," the time of year and weather conditions considered, to have refused assistance, as the anchorage was unsafe. (Record, pp. 330, 337, 347, 348.)

But above all, the captain took assistance; he makes no claim that he discussed the question of price. With a rudderless, water-logged, listing, helpless vessel, laden with a valuable cargo, having a lucrative charter party, having for two weeks been buffeted by successive storms, located near a rocky shore, with winds so fickle that during the preceding 24 hours they had come from all points of the compass, foolhardy indeed would have been the master who would have refused the aid he had called for all day long.

This line of defense is also an afterthought.

“We think \$1000 a most liberal offer” says appellant. A steamer with passengers and cargo, responding to calls for assistance, spends 18 hours in a desperate struggle with an unmanageable tow in the night time with a severe gale blowing, her safety is put in jeopardy again and again by floating wreckage, broken hawsers and terrific seas and with two new hawsers destroyed, she finally brings this tow to a safe harbor; her value is \$50,000, that of the salvaged property \$55,000 to \$75,000. The award was both proper and reasonable.

AUTHORITIES.

Considering the essential elements of salvage as defined by the Supreme Court in *The Blackwell*, 77 U. S. 1, we find them all answered by the facts in this case.

(a) “Labor expended by the salvors in rendering said service.” The crew of the “Nelson” consisted of the intervenors and the officers of the vessel, a detailed statement of the wages of whom is found at page 84 of Libelant’s testimony. The rescue began at 4:30 P. M. December 12th, and continued throughout a tempestuous night and until 10:30 December 13th, or eighteen consecutive hours. The hawser parted four times and the “Holden” was

picked up on each of these occasions at great risk and after heroic efforts.

(b) "The promptitude, skill and energy displayed." On entering the Straits and discovering the "Holden" flying signals of distress, the "Nelson" went promptly to her rescue and after manœvering several times succeeded in passing her a hawser, took her in tow and stayed by her through "the dirtiest night" the master of the "Holden" "ever saw." Considering the hopeless condition of the "Holden," the character of the weather, the fact that she was unmanageable, the "Nelson's" officers employed the greatest persistency and skill.

(c) "The value of the salvor's property endangered." The answer admitted the value of the "Nelson" to have been fifty thousand dollars, while libellant's evidence fixed her value at seventy-five thousand dollars. No evidence of the value of her cargo or her charter was admissible under the Harter Act. She had aboard, however, twelve to fifteen passengers.

(d) "The risk incurred by the salvor in securing the property from impending peril." At the time the rescue was effected, a heavy swell was rolling in from the outside. When the "Nelson" entered the Straits a southwest gale of fifty miles an hour was blowing. At the place where the "Holden" was lying there was a strong tide ebbing. Floating

on her lee side aft was the debris of the broken jury rudder with visible wire cables; the weather was thick and threatening; the barometer stood at 29.40; for ten or twelve days the "Holden" had been in the most terrific storms by which she was disabled. The night before the wind acquired a velocity of fifty miles an hour at Tatoosh. The "Holden" lay in close proximity to a rocky, dangerous coast and at a place, where she was exposed by reason of the contour of the coast line at Neah Bay, to the wind from the south, southwest and west. The "Holden" lay so near to Waddah Island that her captain wanted to drop an anchor while the "Nelson's" towline was being placed aboard and made fast. That night a gale from the west blew at fifty-two miles an hour.

(e) "The value of the property saved." The value of the "Holden" as alleged in the answer was twenty-seven thousand five hundred dollars (\$27,500), of her cargo fifteen thousand five hundred dollars (\$15,500), and of her charter party twelve thousand dollars (\$12,000), or the total value of the property salvaged was about fifty-five thousand dollars (\$55,000).

(f) "Degree of danger from which the property was rescued." It is claimed that the "Holden" might have ridden out the gale from the west on the night of the 12th and 13th of December, which reached the velocity above indicated. Captain Manton, who has had a large experience in these waters,

as well as others of libellant's witnesses testified that the probabilities were that she could not have done so; that at all events it would not have been good seamanship to have taken such a risk. Captain Gove for the respondent, an old tug boat master, familiar with these waters, testified that the holding ground was bad, but that on the supposition that she would be under a lee shore, a supposition which was not true, she might have survived the night of the 12th and 13th.

The court will observe from the hypothetical questions put to respondent's witnesses, that none of them pass upon the fact that the fifty mile gale of the night of the 12th and 13th as shown by the weather report, came from the west and northwest; her position considering the time of the year; the condition of the barometer; the prevalence of violent storms; her close proximity to a rocky shore. It would have been folly for any master to have risked his vessel, cargo, charter party and lives of her crew by refusing assistance.

CHARACTER OF SERVICES.

The service rendered was clearly a salvage service. The danger to the "Holden" was real. As a matter of law it was not necessary that her loss be inevitable and certain.

Talbot v. Seaman, 1 Cranch, 22.

The Spokane, 67 Fed. 256.

Even assuming that the captain of the "Holden" said to the captain of the "Nelson" that he could take the "Holden" as a tow or not at all, a thing Captain Ranselius denies, even this does not change the character of the service. Nor did the discussion detailed by Captain Lauer even support the claim that there was a towage contract made.

Sanderson v. Johnson, Fed. Cases 12297 A, in which case it is held that the master of a vessel in a dangerous situation, after summoning another to his assistance will not be heard to object to the payment of salvage upon the ground that such assistance was unnecessary.

See also *Philips v. U. S.*, Fed Cases 11, 107.

The Huntsville, Fed. Cases 6916.

The Abbott, Fed. Cases 7202.

The Laura Jane, Fed. Cases 8532.

Stone v. Jewel, 41 Fed. 103.

The Rhodes, 82 Fed. 755.

In *Potomac v. Baker*, 8 Sup. Ct. Rep., page 33, practically the same conversation took place between the vessels' captains as respondent contends took place at the time of the rescue of the "Holden," and it was held that salvage was properly awarded. The Supreme Court quotes from the *Comanche* case as follows:

“Nothing short of a contract to pay a given sum for services to be rendered, or a binding engagement to pay at all events whether successful or unsuccessful in the enterprise, would operate as a bar to a meritorious salvage claim.”

Again,

“To bar a claim for salvage where the property in distress on the sea has been saved, it is necessary to plead and prove a binding contract to be paid at all events for the work, labor and services in attempting to save the property, whether the same should be lost or saved.”

Claimants have neither pleaded nor attempted to plead such contract.

The “Holden” was inevitably drifting ashore, was flying signals of distress calling for *immediate* aid. These facts make the claim one of salvage.

The Laura Jane, Supra.

“Salvage is a reward for meritorious service in saving property in peril on navigable waters, which might otherwise be destroyed and is allowed as an encouragement, etc.”

“Salvage will be awarded when property is exposed to a chance which might destroy it, and is saved at some personal risk.”

Federal Cases 2633, 9887, 12334, 12677 and 13175.

“It is the fact of peril” says the court in *The Spokane*, “and not its extent, that gives foundation for salvage. It is sufficient if it be something beyond ordinary danger,—something which exposes the property to destruction unless extraordinary assistance be rendered, and it is not essential that escape by other means be impossible.”

The Conemara, 108 U. S. 352.

The Shaw, Fed. Cases 2949.

In the case of "The Spokane," she was picked up on the Lake disabled at a season when severe storms might be apprehended, and towed to Milwaukee. The service was held salvage.

See also,

Company v. Hunt, Fed. Cases 13326.

Company v. Company, 60 Fed. 921.

Chinese Prince, 61 Fed. 697.

Navigation Company v. Revenue, Fed. Cases 10413.

A vessel, which by a signal of distress, secured the use of salvors, will not be heard to say that she could have saved herself without assistance.

The Huntsville, Fed. Cases 6916.

Stone v. Jewel, 41 Fed. 103.

Sirius, 57 Fed. 857.

In the last named case, the vessel was at anchor when rescued.

The "Nelson" is a passenger vessel regularly so engaged and had twelve to fifteen passengers aboard at the time of the rescue. (See evidence of Capt. Ranselius, p. 138.)

It is held in *The Montecello*, 81 Fed. 211:

"That the towage into port of a disabled vessel by a freight or passenger steamer, should be rewarded by a somewhat greater compensation than a mere towage by tug."

This case falls within the decision in the "Strathnevis" case. The "Holden" was rescued after great danger and hardship, in response to her signals of distress and was taken into a safe harbor at Port Angeles.

The Admiralty Law does not contain any scale by which to determine on a percentage basis the amount earned by salvors, but the rule should be to award such sum as will give a reasonably liberal compensation for the services rendered considering the promptness, efficiency, character of service, value of property saved, the amount risked, the peril incurred by the salvors and the hardship incurred in the service.

The Elm Branch, 106 Fed. 952.

The Coya, 108 Fed. 413.

The "Nelson" lost two new hawsers, one ten inch and the other six inch. She risked the life of her passengers and crew, subjected the "Nelson" to the danger of fouling the broken hawser and the wire cable attached to the remnant of the jury rudder. She encountered the danger of collision with the helpless and unmanageable tow and rendered a service of eighteen consecutive hours, during most of which time the sea was exceedingly rough and the struggle to keep both vessels off the rocky shore of Vancouver Island was very great. The award made

by the trial court was reasonable and proper and the decree should be affirmed.

Respectfully submitted,

KERR & McCORD,

Proctors for Libelant Appellees.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

FRED G. MOCK, as Trustee of ALEXANDER K. STODDARD and CHARLES MOSLANDER, Composing the Firm of STODDARD BROTHERS LUMBER COMPANY, Bankrupts,

Appellant,

vs.

GEORGE STODDARD,

Appellee.

In the Matter of the Estate of STODDARD BROTHERS LUMBER COMPANY, a Bankrupt.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District Court for the District of Idaho, Central Division.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

—
FRED G. MOCK, as Trustee of ALEXANDER K.
STODDARD and CHARLES MOSLANDER,
Composing the Firm of STODDARD BROTHERS
LUMBER COMPANY, Bankrupts,

Appellant,

vs.

GEORGE STODDARD,

Appellee.

—
In the Matter of the Estate of STODDARD BROTHERS
LUMBER COMPANY, a Bankrupt.

—
TRANSCRIPT OF RECORD.

—
Upon Appeal from the United States District Court
for the District of Idaho, Central Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Addresses and Names of Attorneys of Record..	1
Adjudication	2
Admission of Service of Statement of Parts of Record Upon Which Appellant Relies.....	86
Appeal, Citation on (Original).....	82
Appeal, Petition for, and Order Allowing Same.	77
Assignment of Errors.....	78
Attorneys of Record, Names and Addresses of..	1
Certificate, Clerk's, to Transcript of Record....	87
Certificate of Referee to Judge.....	14
Citation on Appeal (Original).....	82
Claims of George Stoddard, Order Disallowing.	3
Clerk's Certificate to Transcript of Record....	87
Judgment	25
Names and Addresses of Attorneys of Record..	1
Opinion	15
Order Allowing Appeal	78
Order Disallowing Claims of George Stoddard..	3
Order Enlarging Time to File Record Thereof and to Docket Cause.....	1
Parts of Record Upon Which Appellant Relies, Admission of Service of Statement of.....	86

Index.	Page
Petition for Appeal and Order Allowing Same..	77
Petition of George Stoddard for Allowance of Claim and Specification of Errors.....	9
Praecipe for Transcript of Record.....	83
Return of Clerk U. S. District Court.....	87
Statement of Parts of Record Upon Which Ap- pellant Relies, Admission of Service of....	86
Testimony on Behalf of Plaintiff:	
Fred G. Mock.....	75
A. K. Stoddard.....	29
A. K. Stoddard (recalled).....	42
George Stoddard	39
George Stoddard	49
George Stoddard (cross-examination by Mr. Clinton)	65
George Stoddard (cross-examination by Mr. Griffiths)	73
George Stoddard (cross-examination by Mr. Neal)	74
Transcript of Record, Clerk's Certificate to....	87
Transcript of Record, Praecipe for.....	83

[Names and Addresses of Attorneys of Record.]

Messrs. JOHNSON & JOHNSON, L. F. CLINTON, Esq., Boise, Idaho,

Attorneys for Appellant.

C. H. FINN, Esq., La Grande, Oregon,

Attorney for Respondent.

[Order Enlarging Time to File Record Thereof and to Docket Cause.]

In the District Court of the United States for the Central Division of the District of Idaho.

In the Matter of the Appeal of FRED G. MOCK,
as Trustee of the Estate of the STODDARD
BROTHERS LUMBER COMPANY,

Bankrupt.

For good cause shown, it is hereby ordered that the time to file the transcript on appeal herein and docket said cause in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended from May 15th, 1909, to and including June 15th, 1909.

May 11, 1909.

FRANK S. DIETRICH,
United States District Judge.

[Endorsed]: In the District Court of the United States in and for the Central Division of the District of Idaho. In the Matter of the Appeal of Fred G. Mock, as Trustee of the Estate of the Stoddard Brothers Lumber Company, Bankrupt. Filed May —, 1909. Order Enlarging Time to File Record Thereof and to Docket Cause. No. 1725.

United States Circuit Court of Appeals for the Ninth Circuit. Filed May 15, 1909. F. D. Monckton, Clerk. Refiled Jun. 11, 1909. F. D. Monckton, Clerk.

In the District Court of the United States for the Central Division, District of Idaho.

IN BANKRUPTCY.

In the Matter of STODDARD BROTHERS LUMBER COMPANY, a Partnership Composed of ALEXANDER K. STODDARD and CHARLES MOSLANDER,

Involuntary Bankrupt.

Adjudication.

At Boise, in said district, on the 19th day of August, A. D. 1908, before the Honorable Frank S. Dietrich, Judge of said court in bankruptcy, the petition of the Pioneer Tent and Awning Company, of Boise, Idaho, and others, that the Stoddard Brothers Lumber Company, a partnership composed of Alexander K. Stoddard and Charles Moslander, be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said Stoddard Brothers Lumber Company, a partnership composed of Alexander K. Stoddard and Charles Moslander, is hereby declared and adjudged bankrupt accordingly.

Dated Aug. 19th, 1908.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Aug. 19th, 1908. A. L. Richardson, Clerk.

*In the District Court of the United States for the
Central Division, District of Idaho.*

IN BANKRUPTCY—No. 310.

In the Matter of STODDARD BROTHERS LUMBER COMPANY, a Partnership Composed of ALEXANDER K. STODDARD and CHARLES MOSLANDER,

Involuntary Bankrupt.

**Order Disallowing Claims of George Stoddard, etc.
IN RELATION TO THE ALLOWANCE OF
THE GEORGE STODDARD CLAIMS OBJECTED TO BY CREDITORS.**

To the Creditors:

Concerning the claims of George Stoddard against the estate, I would preface my opinion by saying as to the claim founded upon Exhibits 1, 2, 3 and 4, being notes for \$1,000.00 each, that under the evidence in this case it seems to me to be beyond question:

First, that these notes were given by A. K. Stoddard to George Stoddard, under the claimed condition of facts, for the purchase by A. K. Stoddard from George Stoddard of George Stoddard's interest in the premises. If this statement be true, and there is no evidence contradicting it, then the claim founded upon these notes cannot be allowed, as it is an individual debt and not a partnership debt.

Again, these notes were all of them Idaho contracts on their face and no person except creditor

himself pretends to make them anything but an Idaho contract, and being an Idaho contract they are barred by the Statute of Limitations, not having been revived by any express statement in writing as required by the Idaho Statutes.

As to the notes known as Exhibits Nos. 8 and 9, the two notes for \$6,000.00, each of these notes are signed by Charles Moslander and A. K. Stoddard, who happen to be the individuals whom A. K. Stoddard and George Stoddard say are the members of the firm of Stoddard Brothers Lumber Company.

Now, the evidence in this case is all to the effect that the original consideration for these notes, if ever given to the firm, was advanced and paid about eight years ago, and that the two notes mentioned are renewals of prior notes originally given. Clearly, these notes on their faces are not a liability against the partnership estate of the bankrupt firm, though they are of course a liability against the individual estate of A. K. Stoddard, and also a liability against the individual estate of Charles Moslander, and the claimant can follow these parties either in a court of bankruptcy or out of it, and have his satisfaction from them, and clearly he would be entitled to a preference as against their assets over firm creditors.

Were the consideration for which these notes were given, advanced and paid by George Stoddard to the partnership within the period of four years, there would be no question of his right to file a claim in the nature of "for money had and received," and

thus recover the value of the goods and chattels advanced and delivered to the firm for its use and together with interest thereon, but there is no pretense that such a condition is true. On the other hand, it is admitted on all sides that the merchandise furnished by George Stoddard as he claims to the firm was advanced about eight years ago. These notes are not firm liabilities. George Stoddard, if he is entitled to recover at all, must hold the members of the firm individually, rather than to hold the firm and its assets, and as a consequence if he is entitled under any circumstances to recover the amount due on these notes from Charles Moslander and A. K. Stoddard, it cannot be out of the firm assets until such time as firm creditors are paid. The authorities are uniform upon this question and need not be cited here.

There is another and all-sufficient reason for the disallowance of the foregoing and also of other claims of George Stoddard against the estate of Stoddard Brothers Lumber Company.

After considering the testimony in this proceeding and weighing deliberately the oral argument and briefs submitted for and against the allowance of George Stoddard's claims, and hearing the examinations of the bankrupt, A. K. Stoddard, and the claimant George Stoddard, and other witnesses, I have come to the conclusion that George Stoddard is either a member of the bankrupt partnership or he has conducted himself in such a manner with reference to the general public as to induce others act-

ing with reasonable caution and prudence to believe that he is a partner in the partnership, and is liable as such to creditors contracting with the firm under such belief.

If he is such a partner, it is needless to cite here the authorities to the effect that one party is postponed in the proof of his claim against the partnership until all of the firm creditors have been fully paid.

As to George Stoddard's liability to creditors and holding himself out as a partner, the authorities are many, and it is not necessary to cite them here.

Sun Mutual Ins. Co. vs. The Kountz Line, 122 U. S. 583, holds that a person who conducts himself in such a manner with reference to the general public as to induce others acting with reasonable caution to believe that he is a partner in the partnership is liable as such to a creditor of the partnership who contracted with it under such belief.

George Stoddard sold whatever interest he did sell, if at all, to his brother A. K. Stoddard individually; the other partner in the firm not even having been notified.

A partner withdrawing from a partnership must make notice of intention to withdraw distinctly known to each of the other partners. *Parsons*, page 437.

He must manifest his desire to withdraw. An unexpressed wish to withdraw means nothing. *Parsons*, page 438.

I cannot believe that the partnership as it existed is indebted to George Stoddard. In order to have

relieved himself from liability as a member of that firm, he must give notice, and that notice must be such a notice as will reach creditors. Giving a notice to a commercial agency would not, in my judgment, be notice to creditors of that firm. Customers may and did, without doubt, sell goods to this firm on the credit of George Stoddard. This claimant, as is shown by the testimony, has been the financial strength of this partnership during its entire existence. Whenever money was to be borrowed for this firm, it was borrowed on the credit of George Stoddard. If that means anything at all, it means, to my mind, that George Stoddard was the financial strength of Stoddard Brothers Lumber Company.

It is clearly proven and it is clearly shown by the authorities that one partner is estopped from proving his claim against the partnership until all other creditors have been paid.

If this alleged retirement of this claimant from this firm was simply "a dropping out," as is shown by the testimony, and the interest that he may have had was given or transferred or sold to A. K. Stoddard, he certainly can go to A. K. Stoddard for his compensation. The notes in question are signed by each partner and are both joint and several. In the hands of an outsider they could not be recovered upon from the partnership, and certainly should not be by the claimant himself from this partnership. It is beyond question that the good faith of the bankruptcy act contemplates payment of partnership debts, leaving out any question of bad faith. If it

was a matter of neglect, carelessness or omission that George Stoddard permitted goods to be purchased and allowed this firm to purchase goods under the name of Stoddard Brothers and upon their credit, he must pay for them.

The case of Feldman vs. Shea, 6 Idaho, 717, is a parallel case.

The letter-heads and billheads of this firm and advertisements have been carried up to the present time the same as they were at the inception of this partnership, or the alleged going out of George Stoddard. They have never been changed. The name of "Stoddard Brothers Lumber Company" has been used from the beginning, and is used to this day. All of which this claimant has been fully aware. No notice of the dissolution of the partnership has ever been given, either by individual notice or by publication, and the firm creditors have never been notified in any way of George Stoddard's withdrawal.

In view of these facts, I conclude that the creditors of this firm whose claims are allowed should be paid in full if the proceeds of the bankrupt estate are sufficient, and it is ordered that the claims of George Stoddard filed herein be and the same are hereby disallowed.

Dated this 19th day of January, 1909.

W. H. SAVIDGE,
Referee in Bankruptcy.

[Endorsed]: Filed Jan. 27, 1909. A. L. Richardson, Clerk.

*In the District Court of the United States for the
Central Division, District of Idaho,*

IN BANKRUPTCY—No. 310.

In the Matter of STODDARD BROTHERS LUM-
BER COMPANY, a Partnership Composed
of ALEXANDER K. STODDARD and
CHARLES MOSLANDER,

Involuntary Bankrupt.

**Petition [of George Stoddard for Allowance of
Claim] and Specification of Errors.**

IN RELATION TO THE ALLOWANCE OF THE
GEORGE STODDARD CLAIMS OBJECT-
ED TO BY CREDITORS.

To the Hon. F. S. DIETRICH, Judge of the Dis-
trict Court of the United States, for the Central
Division, District of Idaho.

The petition of George Stoddard, one of the cred-
itors of said bankrupt, respectfully represents, that
on the 19th day of January, 1909, manifest errors to
the prejudice of complainant was made by the ref-
eree in said matter in a finding and order disallow-
ing the claim of the complainant filed herein, and
expunging the same from the list of allowed claims
upon the trustee's record in said case.

The errors complained of are:

I.

Concerning the claims of the complainant and be-
ing exhibits "1, 2, 3 and 4," notes for \$1,000 each,

the evidence shows that said notes were originally given for lumber furnished to the partnership by the complainant, and that although said notes were signed by A. K. Stoddard in person, they were for lumber furnished the partnership and the partnership got the benefit thereof, and that the said notes were not given for the individual debt of A. K. Stoddard, but for the debt of the partnership.

II.

That although the notes above mentioned were made and dated Nampa, Idaho, the evidence shows that the same were renewal notes given for said previous partnership indebtedness, and were, as a matter of fact, payable at LaGrande, Oregon, no place of payment being designated in the notes themselves.

III.

That interest upon said notes above mentioned, as shown by the evidence, was paid and endorsed thereon from time to time, and that a period of five years has not elapsed since the date of such payment and endorsement thereon, and therefore, under the laws of the State of Oregon, said notes are not barred; the statute of limitations of that State did not commence to run, except from the date of such last payment.

IV.

That the evidence adduced before said referee shows that the notes, exhibits "8 and 9," being two notes for \$6,000 each, signed by Charles Moslander and A. K. Stoddard payable to George Stoddard, the complainant herein, were given for the benefit of said partnership, and that said partnership re-

ceived the consideration and benefit, and that although the same was signed by A. K. Stoddard and Charles Moslander, they were in fact partnership liabilities, and so executed for said partnership.

V.

The referee erred in finding that the complainant, George Stoddard, held himself out as a partner in the business of the Stoddard Brothers Lumber Company, for the reason that the evidence clearly shows that at the time George Stoddard withdrew from the partnership of Stoddard Brothers Lumber Company, to wit, 1897, he was the only creditor of the firm, and that at that time the firm was engaged in the lumber business only, and that there were no creditors to notify of his withdrawal, and that he notified Bradstreet and Dunn's Commercial Agencies of his withdrawal, which have been since generally published.

VI.

The referee erred in finding that George Stoddard is either a member of the bankrupt partnership, or has conducted himself in such a manner with reference to the general public as to induce others acting with reasonable or ordinary caution and prudence to believe that he was a partner in the partnership, and was liable as such to creditors contracting with the firm under such belief, for the reason that there is no evidence showing, or even tending to show, that any of the creditors who have filed claims against said estate, sold any goods or extended any credit to the partnership by reason of George Stod-

dard's connection therewith, and there is no testimony showing, or tending to show, that any of said creditors believed that he was a member of said partnership, but, on the other hand, the testimony conclusively shows that he was not a partner, and has not been since 1897, and never held himself out as being a partner after his withdrawal therefrom,—in fact, did everything that a reasonable and prudent man could do to give notice to the world of his withdrawal, to wit, by notifying Bradstreet and Dunn's Commercial Agencies, and taking no part in the management, running or operation of said business, and being a nonresident of the State in which the business was carried on.

VII.

The referee further erred in holding that in order to have relieved himself from liability as a member of said firm he must give notice, and that notice must be such a notice as will reach creditors, for the reason, as hereinbefore stated, there were no creditors of the firm at the time George Stoddard withdrew therefrom, except himself, and therefore no creditors to notify of his withdrawal, and for the further reason that the evidence shows, in addition to the above, that the partnership engaged in the hardware business after the withdrawal of George Stoddard therefrom, and there is no evidence to show, or even tend to show, that any of the creditors who have filed claims herein were creditors of said firm at the time of the withdrawal of George Stoddard, or were even dealing with the firm at said time, or any time with

five years thereafter, or that they ever extended credit to said partnership by reason of the fact of George Stoddard's connection therewith, or of their belief that he was a partner therein.

VIII.

That said referee erred in his conclusions of law from the evidence produced at said hearing.

Wherefore, George Stoddard prays that he may be decreed by the Court to have his claim against the said bankrupt estate allowed for the full amount thereof, and that he be restored to all things lost by reason of the finding and order by the referee in said matter.

HAWLEY, PUCKETT & HAWLEY,
FRANK ESTABROOK and
C. H. FINN,

Attorneys for George Stoddard.

State of Oregon,
County of Union,—ss.

George Stoddard, the petitioner mentioned and described in the foregoing petition, does hereby make a solemn oath, that the statements made therein are true according to the best of my knowledge and belief.

GEORGE STODDARD.

Subscribed and sworn to before me this 23d day of January, 1909.

[Seal] C. H. FINN,
Notary Public for Oregon, Residing at La Grande,
Union Co., Oregon.

[Endorsed]: Filed Jan. 27, 1909. A. L. Richardson, Clerk.

*In the District Court of the United States for the
Central Division, District of Idaho.*

IN BANKRUPTCY—No. 310.

In the Matter of STODDARD BROTHERS LUM-
BER CO., LTD., a Partnership,
Bankrupt.

Certificate of Referee to Judge.

I, W. H. Savidge, one of the referees of said Court in Bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings, to wit:

Should the claim of Geo. Stoddard, who was originally a member of the Bankrupt Firm, be allowed.

Objection was filed by attys. to the allowance of said claim, which amounts to approximately \$50,000.00.

After hearing all of the testimony of the claimant and also of A. K. Stoddard, his brother, a member of said partnership bankrupt firm and other witnesses, and after hearing arguments of counsel, and considering the pleadings filed in the case, together with the briefs of counsel, I felt warranted in disallowing the said claim and all of it. And my reasons for so doing are given in the order which I made at the time and which I hand you herewith, together with all of the testimony, pleadings, briefs of counsel, notes and petition of counsel for claim-

ant, etc. All of which is most respectfully submitted to your Honor.

And the said question is certified to the Judge for his opinion thereon.

Dated at Boise, Idaho, the 27th day of January, A. D. 1909.

W. H. SAVIDGE,
Referee in Bankruptcy.

[Endorsed]: Filed January 27th, 1909. A. L. Richardson, Clerk.

*In the District Court of the United States for the
District of Idaho, Central Division.*

In the Matter of STODDARD BROTHERS LUMBER COMPANY, a Copartnership Composed of A. K. STODDARD and CHARLES MOSLANDER, a Bankrupt.

Opinion.

C. H. FINN, Esq., Messrs. HAWLEY, PUCKETT & HAWLEY, and FRANK ESTABROOK, Esq., for George Stoddard.

L. F. CLINTON, Esq., Messrs. NEAL & KINYON, Messrs. GRIFFITHS & GRIFFITHS, and Messrs. RICE, THOMPSON & BUCKNER, for Objecting Creditors.

DIETRICH, District Judge:

Upon the petition of certain creditors, the Stoddard Brothers Lumber Company, a partnership, was, on August 19, 1908, adjudicated an bankrupt. It was alleged that the firm consists of A. K. Stoddard and Charles Moslander, but no adjudication of

their insolvency as individuals was sought or obtained. Thereafter George Stoddard, a brother of A. K. Stoddard, presented for allowance several claims evidenced chiefly by promissory notes, to the allowance of which objections were made by some of the creditors. A hearing was had, resulting in an order by the referee rejecting all of the claims; this ruling is now submitted for review.

1. A general objection running to all of the claims is that the claimant is in fact a member of the bankrupt firm. I do not find that this contention is supported by the evidence.

2. Another general objection argued is that George Stoddard, if not in reality a member of the firm, should be held responsible upon the theory that he held himself out as such. In support of this position, the objecting creditors rely mainly upon the fact that the claimant was at one time a member of the partnership, and that after withdrawing, in 1897, he failed to give notice of dissolution, and permitted the business to continue under the original name of Stoddard Brothers Lumber Company; also that he continued to render assistance to the firm in procuring loans, and failed to see that its obligations to him were fully disclosed by its books and records. Apparently more for this than for any other reason, the referee rejected the claims.

The objection was not originally specified as one of the grounds relied upon, and it was not until the evidence was practically closed that the creditors evinced a purpose to assert it. But upon the assumption that it was interposed in time, what effect

should now be given to the objection? The principle underlying the responsibility of a partner who retires without publishing proper notice, for the obligations of the firm subsequently incurred, is that of estoppel. He is held liable, not because he has in truth contracted, but because it would be inequitable and against good conscience to permit him to deny that he contracted.

Thompson vs. Bank, III U. S. 529.

This, of course, implies that he has induced or knowingly permitted the person who is charging him with responsibility to extend credit upon the assumption that he was a member of the firm receiving the credit. If, however, an objection of this kind, when raised by a single creditor, may avail to defeat the allowance against a bankrupt estate of the claims of a person sought to be estopped, the conduct of the claimant amounting to estoppel as to one creditor may operate vicariously as an estoppel in favor of all other creditors, regardless of the question whether or not they have been misled or deceived by any action or inaction on the part of the claimant, or whether they had any knowledge of the "holding out." In this particular case, if it be assumed that the evidence discloses that George Stoddard induced some one of these objecting creditors to extend to Stoddard Brothers Lumber Company credit, upon the belief that he was a responsible member of the firm, why should his claim be postponed to those of other creditors who were not so deceived? If claimant has misled any creditor, it does not follow that his mouth is closed to deny re-

sponsibility to some other creditor. But the absolute disallowance of his claim in effect charges him with responsibility to all creditors alike. It is thought that, as a general rule, this objection does not furnish sufficient ground for the rejection of a claim otherwise just and valid. At most, it can be asserted only by a creditor in whose favor the facts constitute an estoppel against the claimant.

It is true that upon the withdrawal of George Stoddard in 1897, no formal or public notice was given of that fact, and no change was made in the firm name. The only notice which was given was to the Dunn and the Bradstreet mercantile agencies. It is, however, not pretended that any of the present creditors had, prior to George Stoddard's withdrawal, ever transacted business with the firm, and, while there was no change in the business name, it is not contended that either before or after the claimant's withdrawal, his name ever appeared upon the letter or bill heads, or in other advertisements of the partnership business. Apparently it is conceded by the objecting creditors that the record is insufficient to establish estoppel against the claimant, unless, it being shown that the claimant was at one time a member of the firm and that notice of dissolution had not been given, the Court will indulge the presumption that all creditors, in extending credit, acted upon the assumption that he was a member of the firm when the credits were given. But estoppel is a defense to be affirmatively pleaded and proved by him who would avail himself of it. Upon behalf of the objecting creditors it is argued

that *Strecker vs. Conn*, 90 Ind. 469, lays down a contrary rule, and in effect holds that there is a presumption in favor of the creditor where the withdrawing member of the firm has not published notice of the dissolution. The question in that case was as to whether or not it was necessary for the creditor to show that he gave special credit to the 'financial ability' of one holding himself out as a partner. In other words, it was contended by the party sought to be charged as a partner, that the creditor asserting estoppel was bound to show that the credit would not have been extended but for his reliance upon the financial ability of the person so holding himself out. From other parts of the opinion it is made clear that it was not intended to hold that such a presumption in favor of the creditor, as is here contended for, could be indulged. It is expressly said that:

“If one knowingly permits himself to be held out to the world as a partner he becomes liable to those who deal with the firm in the belief that he is a partner as fully as if he were in fact a partner.”

In other words, one holding himself out as a partner, even though he be not such, is “liable to those who deal with the firm in the belief that he is a partner. It is true that in *Thompson vs. Banks*, *supra*, and *Sun Insurance Company vs. Kountz Line*, 122 U. S. 583, it was observed that the “holding out” may be so public and so long continued as to justify the inference that one dealing with the partnership knew of and relied upon it; but no presumption is thus implied. Whether the creditor

knew that the person against whom he seeks to recover represented himself to be a member of the firm receiving credit, and whether to his injury, he acted upon such knowledge, are questions of fact to be proved, not necessarily by direct testimony, but by evidence either positive or circumstantial. Here the record discloses no evidence from which the Court can reasonably infer that any of the creditors, in dealing with the bankrupt firm, relied upon the responsibility of George Stoddard; it is not even shown that any one of them at any time knew that he ever was a member of the firm. That being the case, how could they be misled by the mere fact that he did not give formal notice in the newspapers that he had withdrawn from the firm? The case is thus brought within the general rule that an unknown or dormant partner need not give notice of his withdrawal.

Shumaker on Partnership, page 332.

Moreover, the failure to give notice by publication does not necessarily impose responsibility. "We think it is not an absolute inflexible rule that there must be publication in a newspaper to protect a retiring partner."

Lovejoy vs. Spafford, 93 U. S. 430.

It is concluded that this objection should be overruled without prejudice to the right of any creditor, in a proper proceeding, to assert the responsibility of the claimant, George Stoddard, for any claim against the firm for which he may be liable by reason of the fact that he held himself out as a member of the firm, if in fact he did so hold himself out.

3. Two notes, dated April 5, 1904, each for \$6,000, are signed, not in the firm name, but by the individual members of the firm, namely, Alexander K. Stoddard and Charles Moslander; and it is contended on behalf of the creditors that these notes are not valid claims against the bankrupt firm, but are only obligations of the individual members thereof, and that therefore they cannot be paid until the creditors of the firm, as such, are fully satisfied. Over objections; oral evidence was received to show that the consideration of the notes was a firm obligation; and it is argued that such evidence is inadmissible in that it tends to contradict and vary the terms of a written contract. There is much to be said both for and against the view that oral evidence cannot be received for this purpose, but my conclusion is that, while the form of the contract makes a *prima facie* case of individual liability only, oral evidence may be received to show the real transaction. And where it appears, free from doubt, that the consideration of the instrument passed not to the individual but to the firm, and that it was not given or received for the purpose of substituting an individual for a firm obligation, and that the form was accidental, the obligation is provable against the partnership estate. Here there is no evidence that either party intended to substitute an individual for a firm obligation, or that either party understood that by the form of the notes the existing obligation, which was strictly one of the firm and not of the individual members of the firm, would, in any wise, be altered; nor does it appear that either

party understood that the obligation of the individuals was in any respect to be increased or modified. There is no reason to believe that if the legal effect of an instrument signed by the individuals severally, had been called to the attention of the parties at the time, the notes would have been executed in their present form. There is no showing that the members of the firm had property of any considerable value other than their interests in the joint enterprise, and there is no apparent reason why the claimant should have preferred an individual obligation to a firm obligation. It is therefore thought that the referee correctly ruled in receiving such evidence; and it is concluded that the evidence shows, beyond doubt, that these notes were intended to, and do represent firm, and not individual, obligations.

No decision has been called to my attention, and I have found none, announcing the rule that oral testimony may not be received for the purpose for which it was offered. There is a diversity of opinion as to the effect to be given to such testimony, and when it should be held that the obligation is of the partnership, and when of the individual members thereof. This diversity is fairly exemplified by the opinions in the following cases: *Davis vs. Turner*, 120 Fed. 605 (9 Am. Bank Cases, 704); *Strausse vs. Hooper*, 105 Fed. 590; *In re Warren*, 17191 Fed. Cases; *In re Herrick*, 6420 Fed. Cases; *In re Bacyrus Machine Co.*, 2100 Fed. Cases; *In re Holbrook*, 6588 Fed. Cases; *In re Thomas*, 13886 Fed. Cases.

Before passing this point it may be observed that the terms of the written instrument should control, unless the prima facie case thus made is overcome by evidence both clear and convincing; any other rule would open the door for fraud and double-dealing.

4. The note, Exhibit 2, being No. 2 of the four \$1,000 notes, dated March 1, 1902, is barred by the statute of limitations; the statutes of Idaho and not those of Oregon control. The other three \$1,000 notes are not barred by the laws either of Oregon or of Idaho.

5. The four \$1,000 notes, dated March 1, 1902, being exhibits 1, 2, 3, and 4, are renewals of notes theretofore given by the maker, A. K. Stoddard, to the claimant, George Stoddard, as the consideration paid by the maker to the claimant for the latter's interest in Stoddard Brothers Lumber Company, the bankrupt. It is contended by the claimant that the notes were originally given for an indebtedness due from Stoddard Brothers Lumber Company to him for material purchased by the bankrupt, but whatever may have been said or understood by the parties at the time it is clear that the claimant, George Stoddard, who was then a member of the firm, withdrew and alienated his interest therein in consideration of receiving the originals of these notes. In substance the transaction was one of sale between him and his brother, A. K. Stoddard, and the notes were given for the purchase price. It was a transaction not between the firm and George Stoddard, but between A. K. Stoddard and George

Stoddard. In the course of his testimony, A. K., Stoddard said: "George got out eight or nine years ago. About two years after Moslander came in." Upon being asked whether there were any records showing the change in the partnership, he said: "The record that I bought George Stoddard out and gave him notes for the amount due him." On cross-examination he testified as follows: Q. Who bought George Stoddard's interest? A. I did. Q. How did you sign the notes? A. A. K. Stoddard. Q. George Stoddard did not sell his interest to the partnership? A. No, to me personally." It is incredible that if George Stoddard were selling out to the firm he would not have taken an obligation of the firm, or at least an obligation signed by the individual members thereof. Moslander was entirely ignored. He knew nothing about the sale, and was not asked to sign the notes or assume any obligation. It is therefore thought that, so far as they are based upon the four notes referred to, the claims do not constitute a charge against the partnership estate.

6. The claimant held a mortgage upon real estate in Wyoming belonging to the bankrupt firm, the mortgage having been given as security to him to indemnify him against loss by reason of obligations upon which he had become surety for the partnership, the amount of the mortgage security being \$12,000. It is admitted that this mortgage was voluntarily released by the claimant in order that the bankrupt might sell and transfer the property. Out of the proceeds of the sale of this property obligations of the firm upon which the claimant was liable as a surety were paid to the aggregate amount of \$11,625.00. To this extent the creditors were not injured by the release of the mortgage. The claim-

ant is chargeable with the amount lost to the creditors by reason of the voluntary release, namely, \$375.00, which amount should be deducted from his claims.

The whole matter is remanded to the referee, with directions to take such further proceedings as may be proper, consistent with the views herein stated. In one of the briefs it is suggested that attorneys fees should be allowed to counsel for the objecting creditors. I think it will be better for counsel who desire such allowance to be made to present a formal claim and have it passed upon by the referee in the first instance. If any party is aggrieved, the ruling of the referee may be reviewed by appropriate proceedings.

Dated March 20, 1909.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed March 20, 1909. A. L. Richardson, Clerk.

*In the District Court of the United States for the
District of Idaho, Central Division.*

IN BANKRUPTCY—No. 310.

In the Matter of STODDARD BROTHERS LUMBER COMPANY, a Copartnership, a Bankrupt.

Judgment.

The matter of the allowance of the claim of George Stoddard, filed in the above-entitled bankruptcy proceeding, having been heretofore argued and submitted to the referee herein and by him disallowed, and the said claimant, George Stoddard, having appealed to this Court, and his appeal having been argued and submitted:

It is now ordered, adjudged and decreed that the following items of said George Stoddard's account, filed herein, be allowed and approved as a just and proper claim against said bankrupt estate, to wit:

Apr. 5, 1909, Note George Stoddard (No. 5).....	\$ 6,000.00	
Int. on same to Sept. 30, 1908.....	2,153.33	\$ 8,153.33
Apr. 5, 1904 Note George Stoddard (No. 6).....	6,000.00	
Int. on same to Sept. 30, 1908.....	2,153.33	8,153.33
June 25, 1908, Note Stoddard Bros. Co. (No. 7).....	7,666.05	
Int. on same to Sept. 30, 1908.....	2,614.98	10,281.03
Feb. 26, 1906, 3 Notes Desert Savings Bank (Nos. 8, 9 and 10) paid by George Stoddard.....	15,000.00	
Int. on same to Sept. 30, 1908.....	1,085.00	16,085.00
Dec. 18, 1905, To cash paid Zion Savings Bank.....	420.00	
Int. on same to Sept. 30, 1908.....	81.83	501.83
Dec. 22, 1905, To cash paid F. J. Church.....	400.00	
Int. on same to Sept. 30, 1908.....	77.63	477.63
Mar. 1, 1906, To cash paid La Grande National Bank....	58.80	
Int. on same to Sept. 30, 1908.....	10.65	69.45
Mar. 17, 1906, To cash paid Wm. Church.....	133.30	

Int. on same to Sept. 30, 1908	\$ 23.66	156.96
June 12, 1906, To cash paid David Echles.....	1,281.68	
Int. on same to Sept. 30, 1908	206.35	1,488.03
Sept. 7, 1906, To cash paid Desert Savings Bank.....	787.50	
Int. on same to Sept. 30, 1908	58.49	845.99
May 9, 1908, To cash paid John Deere Plow Co.....	432.15	
Int. on same to Sept. 30, 1908	7.20	439.35
Total		<u>\$46,651.93</u>

From this amount there should be deducted the sum of \$375.00, being the difference between the amount of the second mortgage held by George Stoddard on the Wyoming ranch and the amount of the debts paid by the bankrupt on the sale thereof, and for which George Stoddard was surety, the balance due George Stoddard therefore being \$46,276.93, which amount the referee is directed to recognize as a valid claim against the bankrupt estate.

It is further adjudged that the two \$6,000.00 notes herein referred to, while signed by the members of the partnership individually, were intended to be and are claims against the partnership, and are not the individual or personal obligations of the partners signing the same.

Done in open court this 10th day of April, 1909.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed April 10, 1909. A. L. Richardson, Clerk.

*In the District Court of the United States, District
of Idaho, Central Division.*

IN BANKRUPTCY.

Honorable W. H. SAVIDGE, Referee in Bank-
ruptcy.

In the Matter of the Estate of STODDARD
BROTHERS LUMBER COMPANY, a Part-
nership Composed of ALEXANDER K.
STODDARD and CHARLES MOSLANDER,
Bankrupt.

At a Bankruptcy Court had and held at Boise,
Idaho, on the 30th day of September, 1908, at the
hour of 2 o'clock P. M., in the office of the referee,
same being the time and place of the first meeting
of the creditors of the above-entitled estate.

Present: FRANK ESTABROOK, for George Stod-
dard and others.

JOHN C. RICE, of Rice, Thompson and
Buckner, Attorneys for Continental Oil
Co.

L. F. CLINTON, of Johnson & Johnson,
Attorneys for American Steel & Wire
Co.

A. A. FRASER, Attorney for Crane & Co.

B. F. NEAL, of Neal & Kinyon, Attorneys
for Cribben-Sexton Company and
Others.

H. E. GRIFFITHS, of Griffiths & Griffiths,
Attorneys for Midland Glass & Paint Co.,
and Others.

THOMAS JOHNSTON, Personal Representative of the Mitchell, Lewis & Staver Co.

W. H. PUCKETT, of Hawley, Puckett & Hawley, Attorney for the Bankrupt.

The referee selected F. G. Cordell as stenographer to take the testimony at this hearing, who was duly sworn as provided by law.

[**Testimony of Alexander K. Stoddard.**]

ALEXANDER K. STODDARD, a partner in the firm of Stoddard Brothers Lumber Co., was duly sworn and testified as follows:

(Examined by B. F. NEAL.)

Q. You are a member of the firm of Stoddard Brothers Lumber Company? A. Yes, sir.

Q. How long ago was that firm organized?

A. Twelve years ago last March or April.

Q. You began business in Nampa twelve years ago last March or April? A. Yes.

Q. What lines of business was carried at that time? A. Lumber.

Q. Nothing but lumber? A. Yes, sir.

Q. Who were the members of the firm as then composed?

A. George Stoddard and A. K. Stoddard, Charles Moslander was not recognized at that time.

Q. What do you mean when you say Charles Moslander was not recognized at that time?

A. That he was not recognized as a partner with George Stoddard and A. K. Stoddard.

Q. Did he have an interest in that concern?

A. No, sir.

(Testimony of Alexander K. Stoddard.)

Q. No interest at all? A. No, sir.

Q. When did Moslander first acquire an interest in Stoddard Brothers Lumber Company?

A. Shortly after that.

Q. How long after?

A. Probably a year or so.

Q. The same firm known as Stoddard Brothers Lumber Co., continued the same business but composed of George Stoddard, A. K. Stoddard and Mr. Moslander? A. Yes, sir.

Q. How did George Stoddard get out?

A. George got out eight or nine years ago.

Q. Immediately after the time Moslander came in?

A. About two years after Moslander came in.

Q. Any records made showing that change in the partnership? A. Yes, sir.

Q. What record?

A. The record that I bought George Stoddard out and gave him notes for the amount due him.

Q. How much stock did you have on hand if you remember, at the time you bought George out?

A. I don't remember.

Q. The approximate amount?

A. I couldn't say. George just dropped out and took an account of what he had furnished up to that time and I gave him notes for the amount he put into the business.

Q. The notes now in existence are renewals of those notes? A. Yes, sir.

(Testimony of Alexander K. Stoddard.)

Q. Do you know how much you have purchased from him since and settled for it with notes?

A. No, sir, I could not say.

Q. Will the books show that fact?

A. No, sir, they will not show any of the facts at all as they occurred.

Q. What, if any, notice was given to creditors when George Stoddard went out of the firm four years ago?

A. There was nothing published at that time, only the statement that was given in to Bradstreets and Dunns, that George was not interested and that Charles Moslander was.

Q. The reports at that time show Moslander a party? A. No, I don't know.

Q. Did you in any other way give notice of the change in the partnership?

A. No, we did not publish anything at all in the local papers.

Q. Did you send out letters to creditors?

A. No, sir.

Q. The only notice that you gave of any kind was the notice which you gave to Bradstreets and Dunns?

A. Yes, sir, in making reports to them after the change was made.

Q. You considered when you sent signed statements to Bradstreets & Dunns showing the condition of the firm that you were sending notice out to creditors?

A. We never stopped to think about it, but that was the status of the matter. We thought everybody knew the condition of things.

(Testimony of Alexander K. Stoddard.)

Q. You have been in the partnership and acting as manager all the time? A. Yes, sir.

Q. George is the only brother interested with you at all?

A. The only one I know anything about.

Q. Well, you would know Mr. Stoddard?

A. I know that. George Stoddard was in business with some other brothers at Baker City. George was the party I did business with.

Q. Who was at that time the partners in the company at Baker City?

A. George, Joe and Henry Stoddard.

Q. When did that firm begin doing business?

A. That firm began doing business about twelve years ago.

Q. You were interested at that time in the firm?

A. I was interested up to the time I left there.

Q. Has George Stoddard furnished any lumber during the last year? A. No, sir.

Q. Has he loaned you any money during the last year? A. He paid some accounts for me.

Q. You made several credit statements during the year 1906, to people you were owing?

A. Yes, sir.

Q. In those credit statements or at least some of them you stated that you were owing George Stoddard sixteen thousand and odd dollars. How do you account for the difference between the letter and as it stands now?

A. I suppose it was part that I did not take into consideration.

(Testimony of Alexander K. Stoddard.)

Q. You account for it solely that you made a mistake? A. Yes, sir.

Q. That is substantially the statement you sent out up to last December in all cases?

A. Yes, sir.

Q. What property have you of your own in way of real estate?

A. I have some lots and a house.

Q. The place where you live?

A. Yes, sir.

Q. What property have you in the way of insurance policies? A. In what way?

Q. Insurance policies, life insurance policies on your life? A. About \$18,500.

Q. You have the books here now and can tell us when you and George began business here as Stoddard Brothers Lumber Company?

A. Yes, sir.

Q. Give the date. A. April, 1896.

Q. And George remained a member of the firm until what time?

A. Until March the first, 1897.

(By Mr. CLINTON.)

Q. Who bought George Stoddard's interest?

A. I did.

Q. How did you sign the notes?

A. A. K. Stoddard.

Q. You went on dealing as Stoddard Brothers after George went out? A. Yes, sir.

Q. Did you give any other notes to Stoddard Brothers?

(Testimony of Alexander K. Stoddard.)

A. Yes, sir, or George Stoddard. I don't know which, it was all the same.

Q. George Stoddard did not sell his interest to the partnership?

A. No, to me individually.

Q. And did you pay for it with individual notes entirely, or did you transfer some of the accounts to George?

A. I transferred no accounts at all. I gave him notes for \$5,000.00.

Q. His interest was only worth \$5,000.00?

A. That was the amount of goods he had furnished up to that time.

Q. Did you pay him anything for his interest in the partnership? A. No, sir.

Q. He virtually gave you his interest in the partnership?

A. If there was anything gained, yes.

Q. That partnership did not guarantee the payment of any of the notes to George Stoddard?

A. No, sir.

Q. Did Mr. Moslander consent to the purchase of George Stoddard's interest?

A. He had no business to consent or object.

Q. You did not consult him in the purchase?

A. No.

Q. Was he an equal partner with you at that time?

A. He was in this business here, yes.

(By Mr. NEAL.)

Q. On what date did you buy George out?

A. The first of March, 1897.

(Testimony of Alexander K. Stoddard.)

Q. Has that indebtedness of \$5,000.00 been paid?

A. No, sir, been renewed by renewal notes.

Q. No part been paid? A. No, sir.

Q. You have paid the interest on it other than by renewal notes?

A. All the accounts have been closed up from time to time by notes.

Q. On that \$5,000.00 you have only paid it by renewal notes, you have paid the interest likewise by renewals, none in cash. You still owe that with interest from the time the notes were given in 1897?

A. Yes, sir.

Q. The \$1,000.00 notes which are attached to George's proof are a part of that indebtedness, I take it? Notes signed by yourself?

A. Yes, sir.

Q. Calling your attention to Exhibit No. 5, is that a liability of the firm of Stoddard Brothers Lumber Company?

A. Yes, sir, for money borrowed from the Desert Savings Bank.

Q. Borrowed by whom and for whom?

A. Borrowed for this concern here.

Q. Borrowed by whom?

A. By Stoddard Brothers Lumber Co., secured by George Stoddard.

(By Mr. CLINTON.)

Q. Did you give him security for his endorsement at the time? A. No, sir.

Q. Did you at any time afterwards?

A. No, sir.

(Testimony of Alexander K. Stoddard.)

Q. Never gave him any security for his endorsement?
A. No, sir.

Q. I wish you would say also whether or not any security was given to George Stoddard.

A. No security given to George at all for any notes at any time. Yes, there was too, but it was for endorsement here to Citizens' State Bank on a ranch, the one that was sold in Wyoming.

Q. Did George have any other claims against that ranch other than the \$12,000.00 mortgage which you spoke of?
A. No, sir.

Q. When was that ranch sold?

A. Sold in either June or July last year.

Q. You signed the deed?
A. Yes, sir.

Q. And also the other man signed the deed?

A. Yes, sir, I suppose he did.

Q. And that ranch was entirely owned by Stoddard Brothers Lumber Company?

A. Owned by Stoddard and Moslander.

Q. Was it regarded as an asset of the Stoddard Brothers Lumber Company?

A. It was regarded as belonging to the same people.

Q. What was it sold for?

A. Sold for \$30,000.00.

Q. You signed the deed reciting \$30,000.00?

A. Yes.

Q. What was that ranch worth?

A. Worth anything from fifty to seventy thousand dollars.

Q. Why did you sell it for \$30,000.00?

(Testimony of Alexander K. Stoddard.)

A. Moslander was tired of ranching and got an offer for \$30,000.00 and wanted to know what I thought about the offer. I told him I was not going to ranch and if he was tired of ranching we might as well sell, and whatever he decided to do I would do, and so I consented to the sale of the ranch for \$30,000.00.

Q. Knowing it was worth more?

A. Yes, sir, knowing it was worth more.

Q. Did you ever receive any money at all from the sale of that ranch? A. \$5,625.00.

Q. What became of the money?

A. I paid it to the Citizens' State Bank.

Q. What date?

A. Between the 12th and 20th of December last.

Q. After you knew you were insolvent?

A. Yes, sir.

Q. Do you know, Mr. Stoddard, whether or not this ranch was sold for \$30,000.00?

A. I know the deed was made out for that. I never had anything to say about the sale of it. The deed was for \$30,000.00 and I signed it and returned it. Whether it was the whole of the ranch or part of it, I don't know.

I came here and established a lumber-yard for the sale of lumber and George proposed that we go into together, he to furnish the lumber and the money and I to put in my time and after we had run a year he decided to draw out and I bought him out by paying him notes, and after I bought him out my arrangement with Moslander was still good. I

(Testimony of Alexander K. Stoddard.)

wrote him a letter and told him that the arrangements we made before was still good, and he owned part of this. Give it to him, I supposed it to be the same effect.

(By Mr. CLINTON.)

Q. Mr. Stoddard, did you make out a credit slip in 1906 for the American Steel & Wire Co.?

A. Yes, sir.

Q. What did you list your bills at?

A. I don't know.

Q. See the amount, \$21,000, was that what you listed it at?

A. Yes, but there was a mistake made in that.

Q. What were your bills at that time?

A. I don't remember.

Q. When did you first find out that you had made this mistake? A. I don't know now.

Q. Can you give the time of it approximately?

A. I don't even know the year.

Q. Was it 1907 or 1906?

A. Further back.

Q. Probably 1906?

A. I could not say, but it was further back than than 1907.

Q. Did you notify the American Steel & Wire Company when you discovered this mistake in your credit slip? A. No, sir.

Q. Why not?

A. I did not think it was necessary.

[Testimony of George Stoddard.]

Mr. GEORGE STODDARD, called and being sworn as provided by law, testified as follows:
(By Mr. NEAL.)

Q. A. K. Stoddard first located up at your place before he bought here? A. Yes, sir.

Q. And he was in business with you up there?

A. Yes, sir.

Q. He was a member of the firm of Stoddard Brothers up there? A. Yes, sir.

Q. When did he withdraw from Stoddard Brothers of Baker City?

A. Why, I think it was 1894 or 1895.

Q. And what amounts were coming to him at that time?

A. I couldn't tell you. There has been so many transactions since that, but of course we have it all on our books, the whole history. To tell you positive, I couldn't do it.

Q. When he commenced business down here, you were a partner with him? A. Yes, sir.

Q. On what basis?

A. He did not know just what to do. He didn't want to go back to the ranch. I said go ahead here and locate and I will assist you in getting started and will take one-half interest in it. That is the way it started.

Q. Have you a written agreement of partnership? A. No.

Q. Never at any time? A. No.

(Testimony of George Stoddard.)

(By Mr. CLINTON.)

Q. You did not consult Mr. Moslander?

A. No, I did not ask any questions pertaining to it. I just done the business with A. K.

(By Mr. NEAL.)

Q. And A. K. bought your interest and paid you part in his notes? A. Yes, sir.

Q. Those notes so far as paying the actual debt of \$5,000.00 has not been paid except by renewing the notes? A. No, sir.

Q. The interest has not been paid except by renewal notes? A. No, sir.

(By Mr. CLINTON.)

Q. Did you intend to sell to the partnership or to A. K. personally?

A. I don't know that I remember. I don't know now whether it was the partnership or A. K.

Q. You just sold it then taking the chance?

A. I know this they were partners and I knew whatever one partner did it would be all right.

Q. You had no agreement for the partnership?

A. No, sir.

Q. You looked to Mr. A. K. Stoddard?

A. No, I did not look to A. K. any more than I looked to Moslander. Of course, if it come from A. K. I would have taken it just the same.

(By Mr. NEAL.)

Q. You are individually the owner of the notes running to George Stoddard?

A. No; no note made to George Stoddard; they should be made to Stoddard Brothers Company.

(Testimony of George Stoddard.)

In about 1901, \$15,000.00 was borrowed from David Echles and was turned over to me. I endorsed an order to get that money and that was credited on accounts this company was owing. I arranged with Echles to take this Company's note with my endorsement at that time. A little later it was necessary for that to be paid. Money was borrowed at LaGrande, I think to the amount of \$10,000.00. Company's notes was given with my endorsement. A little later, if I remember right, the bank needed some of this money and Church took up part of it. He carried it as a note; so that is how it comes to be paid to J. M. Church. In order to clean up those notes this loan was made in Salt Lake for \$15,000.00. That took care of part of the Echel notes and took care of some of the other indebtedness.

Q. Was this paid out of the \$15,000.00, the payments to Church?

A. That that you see there was paid by me individually. I think it was interest. The company was in a condition where they could not pay and I took care of it personally.

Q. These two notes of \$6,000.00, each dated April 5, 1904 exhibits 8 and 9, given both for lumber furnished to Stoddard Brothers Lumber Co., here?

A. Yes, sir.

Q. How do these come to be signed this way?

A. Well, about that time Moslander was here and they were in a position at that time that they could not meet their bills and of course I came to

(Testimony of George Stoddard.)

their rescue. That is when I signed this note over to the bank here if I remember right.

(By Mr. GRIFFITHS.)

Q. Do you know anything about the management of the ranch that Moslander had in charge?

A. No, I do not. I have not been on the ranch for twenty years.

(By Mr. NEAL.)

Q. Did you furnish anything to the ranch after A. K. began business out here?

A. No.

Q. No portion of this was furnished to the ranch after that time?

A. No. The ranch was indebted to Stoddard Brothers about \$11,000.00 when A. K. came down here. That indebtedness was settled by taking up A. K.'s interest up there. That company was run entirely separate.

(By Mr. GRIFFITHS.)

Q. What was the name of the business in Wyoming? A. That was Stoddard & Moslander.

Q. The Wyoming firm was Stoddard & Moslander? A. Yes, sir.

Q. That consisted of A. K. Stoddard and Charles Moslander? A. Yes, sir.

Mr. George Stoddard withdrawn, and Mr. A. K. Stoddard recalled.

[**Testimony of A. K. Stoddard (Recalled).**]

Q. Stoddard & Moslander are the identical persons as Stoddard Brothers Lumber Company and have been identical since about the year 1897?

(Testimony of A. K. Stoddard.)

A. Yes, sir.

Q. When did he sell the ranch?

A. In June of last year.

(By Mr. NEAL.)

Q. When were the deeds executed?

A. Either in June or July, I am not sure which, of last year.

Q. There is quite a large increase in bills payable between the last days of December and the statement of January 1st? Between the last portion of December, 1907, and January 1, 1908. How is that accounted for?

A. The only way I can tell, there was bills payable out that was never taken into account in the books. I did not keep the books myself.

Q. Who were they in favor of?

A. George Stoddard; notes given that he was security on.

Q. These were the ones not listed on your ledger?

A. Yes, sir, a note of \$15,000.00 that was for money borrowed from David Echles, that he had no account on my books.

Q. When? . . . A. In 1901.

Q. Who received the money?

A. George Stoddard; was applied on his account with this concern.

Q. The partnership did not get that \$15,000.00?

A. It got it in the way that they could credit on account. George Stoddard got the money.

(By Mr. CLINTON.)

Q. Who was the usual man to sign the firm notes.

(Testimony of A. K. Stoddard.)

A. I do.

Q. I would like to have Mr. Stoddard account for the discrepancy between the bills payable listed at \$21,000.00 on the credit slip of the American Steel & Wire Company made out August 27, 1906; the note paid at Salt Lake for \$6,000.00; the \$5,600.00 at the Nampa Bank, and account for the discrepancy between the bills payable as listed and the present claims of George Stoddard.

A. I will answer that by saying that I made a mistake when I made that statement to the American Steel & Wire Company.

Q. Why did you not correct your ledger when you found out the mistake?

A. I don't know why I did not.

Q. You said yesterday you found out that you made a mistake as far back as 1906, at least as far back as 1907.

A. Well, I knew for some time before the correction was made that there was a discrepancy.

Q. But you never corrected it until it finally came to an issue where it was necessary to do so. What was your object?

A. No object whatever.

Q. You knew your creditors would inquire about that?

A. Never took that into consideration at all.

Q. You know that to be a fact? A. Yes.

Q. And you deliberately left those bills payable off your ledger?

A. I did it carelessly, not deliberately.

(Testimony of A. K. Stoddard.)

Q. All we want to know is that you left them off. George Stoddard knew of that discrepancy at the same time? A. I guess he did.

Q. He did not ask to have those notes of his put on the ledger, did he?

A. I don't remember that he did.

Q. He is not charged with that \$15,000.00. George Stoddard knew that he was not charged with it, did he not? A. Yes, sir.

A. He sent me a statement of the notes that he held of mine and the notes that he was security in which he had to pay, sometime in December, 1907.

Q. Early part of December or the latter part?

A. The latter part.

Q. Could you tell the exact date?

A. No, sir.

Q. Could you tell within three or four days?

A. No, sir.

Q. Do you remember whether you received the statement before or after you sent out the notice to creditors that you could not meet your obligation?

A. I think it was after; I am not positive.

Q. You think you received the statement afterwards? A. Yes.

Q. That was the first written request you ever received from George Stoddard to put certain credits on your ledger? A. Yes.

Q. Along about that time he knew perfectly well how the accounts stood?

A. Yes, he knew how the accounts stood; he was there and looked them over at different times.

(Testimony of A. K. Stoddard.)

By Mr. GRIFFITHS.—I object to the allowance of each and every and all of the claims presented by George Stoddard, or by George Stoddard on behalf of Stoddard Brothers Company and Stoddard Brothers, against the estate of Stoddard Brothers Lumber Company of Nampa, Idaho, for the reason that the evidence tends to show that said claims are unjust and excessive and fraudulent as to other creditors, and that it is necessary that further inquiry be had before the Court before passing finally upon the same.

By Mr. NEAL.—Also for the further reason that the evidence discloses that as to a part of these notes, that they are not the notes of the firm, and that they are the individual notes as to certain of them of A. K. Stoddard; as to others that they are the individual notes of A. K. Stoddard and Charles Moslander, and that they do not purport on their face to be a firm liability, and for the further reason that the proof offered is not competent proof for the purpose of showing notes signed by individuals to be a firm liability, and for the further reason that as to at least one of the \$1,000.00 notes, the same is barred by the Statute of Limitations of the State of Idaho, the place where said note was made and payable, and for the further reason that George Stoddard released mortgages in the sum of \$12,000.00 held by him as general security for advances made to the use of Stoddard Brothers Lumber Company and notes which he claims to have signed for the use of Stoddard Brothers Lumber Company, and

(Testimony of A. K. Stoddard.)

that said mortgage was released and satisfied by said George Stoddard without requiring the paying of any portion of the indebtedness alleged to be due from the partnership to him, and without requiring the payment of any of the notes which he alleges he was security for and that the firm of Stoddard Brothers and Stoddard Brothers Company were surety for the bankrupt firm; for each and every and all of which reasons the notes should be respectively disallowed.

- This objection is made thus in lump, as it were, to save time of making the objection applicable to the separate notes, and ask the Court to make the reference of the particular objection to the note to which applicable.

By Mr. CLINTON.—I object to the claims of George Stoddard for the following reasons:

1. That he was a secured creditor, and of his own free will released his security.

2. That he was fraudulent as to the creditors of the Stoddard Brothers Lumber Company of Nampa in not entering or having entered upon the ledger of Stoddard Brothers Lumber Company certain credits which he now claims as part of his proof, and that A. K. Stoddard was fully aware of their nonentry and failed to enter or have entered the same. We allege that this was absolutely fraudulent as to all creditors of this concern.

3. That a part of George Stoddard's claims is for individual indebtedness of A. K. Stoddard personally, and for which the partnership assets can in no

(Testimony of A. K. Stoddard.)

way be held legally liable. For these and many other reasons we oppose the allowance of this claim in full.

By Mr. NEAL.—We object to the allowance of the claim of the Racine-Satley Co., of any portion thereof, for the reason that the evidence discloses that the Racine-Satley Co., on December 23, 1907, and with full knowledge of the fact that the Stoddard Brothers Lumber Company was a bankrupt, demanded and received from said bankrupt notes payable to the order of the bankrupt, in a sum approximately equal to their claim, and that since said date a large portion of said notes have been collected and the moneys paid over to the Racine-Satley Company; that said notes having been received and payments thereon made with knowledge that the Stoddard Brothers Lumber Company was then a bankrupt, the same is and was a preference, and no part of the claim of the Racine-Satley Company is entitled to allowance unless said preference be relinquished and said funds paid back to this court or its officer.

[Endorsed]: Filed Apr. 15, 1909. A. L. Richardson, Clerk.

*In the District Court of the United States, District
of Idaho, Central Division.*

Before W. H. SAVIDGE, Referee.

IN BANKRUPTCY.

In the Matter of the Estate of STODDARD
BROTHERS LUMBER COMPANY, a Part-
nership Composed of A. K. STODDARD and
CHARLES MOSLANDER,

Bankrupt.

Boise, Idaho, January 6, 1909, 2:00 o'clock P. M.

Appearances:

FRANK ESTABROOK and C. H. FINN, for
George Stoddard et al.

L. F. CLINTON, of Johnson & Johnson, for
American Steel & Wire Company.

B. F. NEAL, of Neal & Kinyon, for Cribban-
Sexton Co. et al.

H. A. GRIFFITHS, of Griffiths & Griffiths, for
Midland Glass & Paint Company et al.

W. H. PUCKETT, of Hawley, Puckett & Haw-
ley, for the Bankrupt.

[**Testimony of George Stoddard.**]

GEORGE STODDARD, duly called, sworn and
examined, testified as follows:

The WITNESS.—In order that you may not get
mixed up on this, I will say that there are three
companies, Stoddard Brothers of Baker City, the
first company; Stoddard Brothers of Baker City, the
second company; and at Nampa is the Stoddard
Brothers Lumber Company.

(Testimony of George Stoddard.)

Q. Mr. Stoddard, in this protest of the American Steel and Wire Company I find the first item, two notes for \$6,000 each, of April 5, 1904, with interest to the amount of \$2,153.33 each, in which it is alleged they are signed by A. K. Stoddard and Charles Moslander, and not purporting in any way to be partnership liabilities, and, further, they appear to be exact duplicates, amounting to \$6,000 and the interest claimed on the same. I will ask you to state the facts as to those two notes; I think that they are—

Q. You may state whether or not at the time they were signed by A. K. Stoddard and Charles Moslander, state whether or not those notes were given for a partnership liability, being the firm of Stoddard Brothers Lumber Company.

Mr. CLINTON.—I object to the varying of the terms of a written instrument by parcel testimony those notes do not purport in any way to be partnership notes.

Mr. GRIFFITHS.—I object to the question on the grounds that it is incompetent, irrelevant and immaterial as to whether this was a partnership liability or not, the note itself being an individual note and binding the individuals only and it could not in any event, whether it were a partnership liability or not, bind the partnership.

The COURT.—The objection will be sustained.

Mr. FINN.—We will take an exception.

Q. What were those notes given for Mr. Stoddard?

(Testimony of George Stoddard.)

Mr. NEAL.—Same objection.

Mr. GRIFFITHS.—We object for the reason that the same is incompetent, immaterial and irrelevant; that the notes appear upon their faces as individual notes, and not binding upon the partnership, and it is immaterial what the consideration was.

Mr. FINN.—We are not asking for the consideration; I am asking what they were given for—what was the occasion for the notes being given.

The COURT.—The objection will be sustained.

Mr. FINN.—Exception.

Mr. FINN.—We offer to show by this witness that those two notes were given by the partnership of Stoddard Brothers Lumber Company—that those two notes for \$6,000 each, of April 5, 1905, upon which interest is sought to the extent of \$2,153.33 each, that those notes that are signed by A. K. Stoddard and Charles Moslander were given by them, signed by them for and on behalf of the Stoddard Brothers Lumber Company, they being the only partners or members of that Company, and that they were given for the partnership business, in the partnership business for a consideration that moved to the partnership and which the partnership had the benefit of.

Mr. GRIFFITHS.—We object to the offer on the ground that the same is immaterial, irrelevant and incompetent, and even admitting the hypothesis of counsel for claimant, such notes are not provable in bankruptcy proceedings against the firm of Stoddard Brothers Lumber Company.

(Testimony of George Stoddard.)

The COURT.—The objection will be sustained.

Mr. FINN.—Give us an exception.

Q. (Reporter reads foregoing question.)

A. For lumber furnished the business.

Q. The business of whom?

A. Stoddard Brothers Lumber Company.

Q. You may state who furnished the lumber.

A. It was furnished by Stoddard Brothers of Baker City.

Q. State who was the owner of that claim of Stoddard Brothers.

A. Why Stoddard Brothers. It was assigned to me.

Q. Where did the lumber go that you shipped?

A. It went to Nampa, Idaho.

Q. Who used the lumber—who had the lumber?

A. Why, it was shipped to the Stoddard Brothers Lumber Company.

Q. State whether or not it has ever been paid for. A. No, sir, it has not.

Q. You may state, if you know, why those notes were signed individually instead of Stoddard Brothers Lumber Company.

A. Why, I don't know; the two parties were there and they just signed them in that way; I thought there was no difference, knowing that they were the two that constituted the business; I thought the individual signature was really better than the Company's signature.

Q. Mr. Stoddard, there are four notes objected to, dated May 10, 1902, for \$1,000 respectively, with

(Testimony of George Stoddard.)

the interest to date, signed by A. K. Stoddard and made payable to the order of Stoddard Brothers. I will ask you to look at those notes and state whether they are the notes.

Mr. CLINTON.—We object on the same grounds as heretofore stated.

A. Yes, sir.

Mr. FINN.—I think, gentlemen, you have made a mistake on your protest; I don't think it is May 10th. Your protest says May 10, 1902, and I see no such notes here. I think it should be March 1st.

Q. (Notes handed witness.) You may state, Mr. Stoddard, whether or not those notes were the notes of the partnership, Stoddard Brothers Lumber Company, notwithstanding they are signed by A. K. Stoddard:

Mr. GRIFFITHS.—Objected to for the reason that it is incompetent, irrelevant and immaterial; that it is an attempt to vary the terms of the notes by parol testimony; that said notes are not provable in bankruptcy proceedings against the firm of Stoddard Brothers Lumber Company as they purport to be the individual notes of A. K. Stoddard.

A. Why, I would say yes; they are notes for material furnished.

Q. State what the material was.

A. Lumber.

Q. State where the lumber was shipped from.

A. Baker City.

Q. And by—

A. By Stoddard Brothers.

(Testimony of George Stoddard.)

Q. There is an objection made to one note of \$5,000 drawn in favor of the Desert Savings Bank of Salt Lake City—there in one \$5,000 note No. 3677, which is here marked Exhibit 5, is dated February 26, 1906, and the objection is that it does not show upon its face that payment has ever been received. What are the facts about the payment of that note, Mr. Stoddard?

Mr. GRIFFITHS.—Let it be understood that the objection heretofore made to the former notes goes to these notes the same as to the former ones.

Mr. FINN.—We have no objection.

A. The facts are that it has been paid.

Q. Who paid that note?

A. I paid it.

Q. To whom did you pay it?

A. To the Desert Savings Bank.

Q. This note is signed George Stoddard. State how you signed that note—in what capacity?

A. I signed it as security.

Q. There is an objection, also, to one other note for \$5,000, of February 26, 1906, a payment of \$2,500 having been made November 27, 1907, upon the same, says the protest, also \$656.25 interest, neither of which amount have been shown to be indebted against the George Stoddard account. You may state what the facts are as to its being paid. Can you look at those three notes presented (handing notes to witness) and state which of those notes represent the payment of November 27, 1907?

(Testimony of George Stoddard.)

A. Why, at the time that endorsement was made on there a payment was made to pay off one of those notes and the balance is that endorsement.

Q. Who paid that amount?

A. I paid it.

Q. To whom did you pay it?

A. I paid to the Desert Savings Bank.

Q. The payee of the note?

A. The payee of the note.

Q. For whom did you pay it?

A. For Stoddard Brothers Lumber Company.

Q. There is an objection made to cash paid to David Eckles June 12, 1906, \$1,281.68 and in which you have presented here a claim, also, in addition, \$294.79 as interest. State what that was paid to him for.

A. It was paid to him on the note that he held of Stoddard Brothers Lumber Company, which I was endorsed on.

Q. Who paid that?

A. I paid the check to Stoddard Brothers Lumber Company and they sent a check in lieu of this to David Eckles.

Q. You may state whether or not you have ever been repaid. A. No, sir, I have not.

Q. State whether or not that is due.

A. Yes, sir.

Q. State whether or not you have been paid any interest thereon. A. No, sir, I have not.

Q. Have you the check for that?

A. Yes, sir.

(Testimony of George Stoddard.)

Q. Will you produce that check please?

A. (Witness produces check.)

Q. You may state whether or not the paper which you hold in your hand contains the check for the amount that you paid. A. Yes, sir.

Q. State whether the endorsements on the back of that check were made in the due course of business of that bank, if you know. A. Yes, sir.

Mr. FINN.—We offer this check in testimony and ask that it be marked Exhibit “A” of the claimant’s proof.

Mr. GRIFFITHS.—We object to it as incompetent and immaterial and not provable as a claim against the Stoddard Brothers Lumber Company, for the reason that it is a check made payable to A. K. Stoddard individually.

(Same is admitted and marked Exhibit “A.”)

Q. It appears that this check was made to A. K. Stoddard. For what purpose was it made to him?

Mr. GRIFFITHS.—We object to the question as immaterial, irrelevant and incompetent; the check shows for itself that it was made payable to A. K. Stoddard and cannot be proved as a claim against the Stoddard Brothers Lumber Company.

A. It was made payable to A. K. Stoddard because we didn’t consider it made any difference; I knew he was handling the Stoddard Brothers Lumber Company and it was for business pertaining to the Stoddard Brothers Lumber Company.

Q. You may state whether or not that paid a debt of that firm. A. Yes, sir, it did.

(Testimony of George Stoddard.)

Q. There is an objection to your item of cash paid Desert Savings Bank, September 7th, of \$83.78. Can you state what that was paid for?

A. For how much, you say?

Q. For \$83.78.

A. I think that must be interest on the check, wasn't it?

Q. I don't know, sir; I am asking you. That is the second item in their protest, \$83.78, cash paid Desert Savings Bank, September 7, 1907.

A. Why, I think something is left out there. There was a check paid them of \$787.50 and I think you will find that is interest on this check.

Q. What was it paid to that bank for—for whose benefit?

Mr. GRIFFITHS.—Are we not getting a little misty here in regard to Mr. Stoddard's reply to that? He says he thinks, and he has not got it identified yet, as I understand his answer.

Mr. FINN.—I will get to that directly, Mr. Griffiths.

Mr. GRIFFITHS.—He was only guessing, as I understood it, whether it was paid to the bank and what it was for.

The COURT.—Proceed, gentlemen, and let him answer the question, Mr. Griffiths.

A. I haven't any canceled check from them.

Q. From your own knowledge and remembrance can you say what it was paid for?

A. Why, that is for interest on a check paid them of \$787.50, which was paid them from interest.

(Testimony of George Stoddard.)

Q. For whose benefit was it paid?

A. For the Stoddard Brothers Lumber Company.

Q. State whether or not you have any check in your possession as a voucher for that.

A. Yes, sir, I have.

Q. Will you produce that check showing this \$83.78? A. Yes, sir. (Produces check.)

Q. Is this the check that you hold in your hands that you say was for interest? A. Yes, sir.

Q. You may state whether or not you paid that check. A. Yes, sir, I did.

Q. For whose benefit did you pay it?

A. Stoddard Brothers Lumber Company.

Q. For what purpose?

A. Interest on a note that I was endorsed on for that company.

Q. State whether or not that note was given by the Stoddard Brothers Lumber Company to the Desert Savings Bank. A. Yes, sir, it was.

Q. You may state whether or not you have ever been repaid—

Mr. GRIFFITHS.—Just wait a moment. We wish to object to the last question for the reason that the note itself is the best evidence.

Q. (Continued.) —this \$787.50 or any part thereof. A. No, sir, I have not.

Q. State whether or not that is due from the Stoddard Brothers Lumber Company to you.

A. Yes, sir, it is.

(Testimony of George Stoddard.)

Q. You may state whether or not you have ever been paid by the Stoddard Brothers Lumber Company any interest upon this sum of \$787.50.

A. No, sir, I have not.

Q. Here is a letter, with this check, purporting to be signed by Elias A. Smith. You may state whether or not you received that letter in the due course of mail.

A. Yes, sir, I did.

Q. You may state if you are acquainted with the signature there attached.

A. As I have done business with him, yes.

Q. There is an objection to your claim in the protest, to cash paid William T. Church, May 17, 1906, \$133.30 and interest to the amount of \$33.80. You may state what are the facts in respect to that payment or claim.

A. That was paid to W. J. Church for interest on notes of Stoddard Brothers Lumber Company indorsed by me.

Q. There is an objection here against your item in your claim against Stoddard Brothers Lumber Company, to cash paid the La Grande National Bank, May 1, 1906, \$58.80, together with your claim of interest on that amount in the sum of \$15.18. State what that was given for.

A. That was given for interest on a note of Stoddard Brothers Lumber Company.

Q. To whom?

A. To the La Grande National Bank.

Q. What was the amount of that note, if you know?

A. Why, I think it was \$10,000.

(Testimony of George Stoddard.)

Q. You may state if you paid that amount of money, \$58.80 to the La Grande National Bank?

A. Yes, sir.

Q. There is an objection made to your item in your claim of, to cash paid William Church, December 22, 1905, \$400 and interest on the same to the amount of \$110.89. You may state whether or not you paid that sum to William J. Church?

A. Yes, sir, I did.

Q. You may state what it was for.

A. Why, I don't know whether that was for interest or part payment on the principal of a note that he held of Stoddard Brothers Lumber Company, which I was endorsed on.

Q. There is an objection made to your item of cash paid December 18, 1905, to Zion Savings Bank, \$420 and interest also on the same to the amount of \$116.90. You may state whether or not you paid that sum of money to the Zion Savings Bank.

A. Yes, sir, I did.

Q. You may state for whose benefit that was paid.

A. For the benefit of Stoddard Brothers Lumber Company.

Q. You may state upon what it was paid, if you remember.

A. It was paid on a note—for interest on a note of theirs which I was endorsed upon.

Q. That is, a note of Stoddard Brothers Lumber Company?

A. Stoddard Brothers Lumber Company.

(Testimony of George Stoddard.)

Q. To whom given?

A. Given to the Zion Savings Bank.

Q. You may state whether or not you have ever been repaid any part of that \$420 by Stoddard Brothers Lumber Company.

A. No, sir, I have not.

Q. State whether or not you have ever been paid any part of the interest accumulating thereon \$116.19.

A. No, sir, I have not.

Q. State whether or not the same is due and payable from Stoddard Brothers Lumber Company and their estate.

A. Yes, sir, it is.

Q. Are you able to state now, at this time, whether or not you have the note or the notes or claim or claims from these various persons upon which you have paid these various checks for interest?

A. If I have the notes?

Q. Yes, sir. Have you the notes or are there any of the notes you have presented here?

A. No, sir, not if I understand you right—well, there is one note there, I think seven hundred and eighty and some odd dollars, I believe—one of those notes.

Q. You may see if you can find it.

A. Well, I guess likely it would be distributed and would have to be figured. Where is the check and we can tell—the check of \$787? (Witness handed checks.) That check would cover those three endorsements.

Q. On what note?

A. I guess the three notes. The \$262.50—

(Testimony of George Stoddard.)

Q. That is, on the three \$5,000 notes?

A. The three \$5,000 notes.

Q. Now, I will ask you under what circumstances was any note given to either William J. Church or the La Grande National Bank. State the circumstances if you can.

A. The circumstances were this: Money was borrowed at La Grande to apply on a note (that was held by David Eckles) of the Stoddard Brothers Lumber Company.

Q. For what amount?

A. Why, if I remember, \$10,000.

Q. And how was the money applied?

A. The money was turned over to the Stoddard Brothers Lumber Company and they applied it, as I remember.

Q. Have you the note or notes given the La Grande National Bank or William J. Church?

A. No, I have not; they were canceled paid and of course would be returned to the Stoddard Brothers Lumber Company.

Q. You may state whether or not you were a surety or endorser upon the note given by the Stoddard Brothers Lumber Company to David Eckles.

A. I was an endorser.

Q. You may state whether or not you were a surety or endorser upon the note given to the La Grande National Bank. A. Endorser.

Q. State whether or not you were surety or endorser upon the note given by Stoddard Brothers Lumber Company to William J. Church.

(Testimony of George Stoddard.)

A. I was an endorser.

Q. You may state whether or not that paper you hold in your hand is a check or voucher for the payment by you to the Zion Savings Bank of \$420.

A. Yes, sir, that is my check.

Q. This is the one you say you have never been repaid? A. Yes, sir.

Q. You may state whether or not this letter attached to it came to you from the Zion Savings Bank in the due course of mail.

A. Yes, sir.

Q. You may state whether or not you are acquainted with the signature to that letter of George M. Cannon, Cashier.

A. Just in the way of correspondence.

Mr. FINN.—We will introduce this in testimony and ask that it be marked Exhibit “F” in support of claimant’s proof.

(Same is admitted and so marked.)

Q. Now, in this protest objection is made to your having at one time had a second mortgage upon a ranch in Spring Valley, Wyoming, of \$12,000, and that you released that mortgage; and I think your testimony heretofore referred to that, but to make it plainer, what are the facts about that \$12,000 mortgage?

A. Yes; I held a second mortgage of \$12,000 on that ranch and I released it.

Q. What did it secure—that \$12,000 mortgage?

A. It was security for indebtedness that Stoddard Brothers Lumber Company owed me, and the other concerns I represented.

(Testimony of George Stoddard.)

Q. You may state what that indebtedness was represented by, if you remember.

A. It was represented by the lumber furnished and—

Mr. GRIFFITHS.—We wish to interpose an objection in regard to that mortgage for the reason that it is not the best evidence; the mortgage itself is the best evidence.

A. (Continued.) —it was given to secure me for notes.

Q. What were the amounts of the notes if you remember?

A. Oh, I don't remember, there were so many of them; that is, notes I held of their and where I was endorsed on them.

Q. When you say "theirs" who do you mean?

A. Stoddard Brothers Lumber Company.

A. Our books will show everything of the lumber transactions but those notes I have endorsed we have not any record in our books of them.

Q. You may state whether or not you have an itemized account of the transaction involving this whole sum of money that you are now claiming from this estate.

A. We have an itemized account showing everything pertaining to the notes of Stoddard Brothers Lumber Company, but the notes that I was endorsed on, why, our books won't show because that business was just transacted by correspondence between A. K. and myself.

(Testimony of George Stoddard.)

Mr. CLINTON.—Q. You say your books will not show it? A. No, they will not show it.

Cross-examination.

(By Mr. CLINTON.)

Q. Are you still a member of Stoddard Brothers Lumber Company?

A. Stoddard Brothers Lumber Company?

Q. Yes, of Nampa? A. No, sir.

Q. Were you ever a member? A. Yes, sir.

Q. What interest did you have? How much of an interest?

A. When I was a member I had a one-half interest.

Q. When did you dispose of that interest?

A. I disposed of it March 1, 1897.

Q. To whom did you dispose of it?

A. Why to A. K. Stoddard and his partner.

Q. What did you get for it?

A. I got just exactly Stoddard Brothers' account.

Q. Don't evade my question, Mr. Stoddard. I want to know what you got for your interest in the partnership of Stoddard Brothers Lumber Company.

A. I got five notes of \$1,000 each and a check for a hundred and some odd dollars.

Q. You stated awhile ago that those notes were given for lumber furnished to the Stoddard Brothers Lumber Company and now you state that they were for your partnership.

(Testimony of George Stoddard.)

A. Well, I was right in both places. The lumber was shipped there when I was a partner; we done business there about a year and I made this proposition to him, "Here, I will take just the amount that you owe Stoddard Brothers and you can take the business."

Q. Were you not entitled to what they owed you irrespective of this arrangement to sell your interest in the partnership?

A. I don't understand.

Q. The partnership purchased lumber of you amounting to \$5,000?

A. Yes, sir.

Q. They owed for that?

A. Yes, sir.

Q. Why did you dispose of your interest in the partnership for nothing?

A. Well, because I was willing to take that for it.

Q. Take what?

A. Take just the account as it was; that is, I was willing to pull out without anything.

Q. You had the account already, did you not?

A. Yes.

Q. Well, what specific arrangement was made in regard to your interest in the partnership irrespective of your account against them?

A. There was no arrangement, only if he would pay the account—there was no arrangement made only this, that I would be willing to release all my rights to the Stoddard Brothers Lumber Company if—well, I guess that is it—that is all there was to it, because the other would take care of itself.

(Testimony of George Stoddard.)

Q. Did you consult Mr. Moslander when you sold out? A. No, sir.

Q. Did Mr. A. K. Stoddard consult Mr. Moslander? A. I don't know.

Q. No definite arrangement was ever made as regards your interest in the partnership separate and apart from the account which the Company owed you?

A. No, only that understanding that I would withdraw from the Company.

Q. Nothing definite was made in regard to it?

A. Well, there was that arrangement made—that understanding.

Q. Was there any agreement of dissolution drawn up? A. No, sir.

Q. Wasn't it published in any of the local papers, the fact that you were withdrawn from the partnership?

A. Not published in any of the local papers.

Q. Have you at any time ever personally negotiated a loan for Stoddard Brothers Lumber Company? A. Yes, sir.

Q. If so, what loans?

A. I negotiated a loan from David Eckles.

Q. And the amount of that? A. \$15,000.

Q. And the date?

A. Well, I couldn't give you the date; I think it was—well, it was about 1901, although I am not certain as to that.

Q. About 1901?

A. I wouldn't be certain of that.

(Testimony of George Stoddard.)

Q. Did you ever borrow any money from the Desert Savings Bank for Stoddard Brothers Lumber Company? A. Yes, sir.

Q. You negotiated that loan personally did you?

A. Yes, sir.

Q. What other loans have you personally negotiated for the firm since you claim to have withdrawn?

A. All the loans where I have endorsed.

Q. Do I understand then, Mr. Stoddard, that ever since you claim to have withdrawn from the firm that you have personally negotiated every loan for Stoddard Brothers Lumber Company upon which you are surety?

A. All but the one at Nampa.

Q. So you virtually acted as their financial agent or financier all the way through these dealings?

A. Well, there was a reason for it.

Q. What was that reason?

A. If you will allow me to explain the whole thing I will give it to you.

Q. Just explain why you negotiated the loan personally.

A. At the time the loan was negotiated from David Eckles Stoddard Brothers wanted the money at Baker City and Stoddard Brothers Lumber Company was owing them, so I arranged to get the money for Stoddard Brothers Lumber Company and I endorsed. Well, a year or two later Eckles wanted his money; they could not pay it; so I arranged to get the money from La Grande—from the La

(Testimony of George Stoddard.)

Grande National Bank; and then the La Grande National Bank wanted their money and it was gotten from Will Church; and later on, in order to clean up those scattering accounts, to finish paying Eckles, the money was borrowed from the Desert Savings Bank, and that is what these notes represent.

Q. Why did Stoddard Brothers Lumber Company have you personally negotiate these loans rather than anyone else?

A. Because there was no one else; they couldn't get it.

Q. Were you interested in the firm in any way?

A. No, sir, only what they owed me.

Q. Did you apply this \$15,000 which you borrowed from the Desert Savings Bank to your own account and credit Stoddard Brothers Lumber Company with that amount?

A. No, sir, I borrowed the money from another place individually to pay the Desert Savings Bank; my own notes are out to-day for it.

Q. What became of the actual cash which you borrowed from the Desert Savings Bank? Did you take that and apply it to yourself and credit the Stoddard Brothers Lumber Company, or did you turn the actual money over to the firm?

A. That was turned over to the firm in order to take care of the other notes.

Q. Mr. Stoddard, Mr. A. K. Stoddard testified here that you took that money personally and applied it to your account—that you credited them

(Testimony of George Stoddard.)

with that amount but actually received the money yourself.

A. Well, he is mistaken there. The \$15,000 from Eckles was applied to our account; he got credit on Stoddard Brothers books, but I was endorsed individually—

Q. The money that was borrowed from Eckles was used by you personally?

A. No, it was used by Stoddard Brothers and no other firm; the firm that furnished the stuff.

Q. Stoddard Brothers of La Grande?

A. Stoddard Brothers of Baker City.

Q. At the time you withdrew from the firm was any arrangement made as to the name under which the firm business was to be conducted?

A. No, sir, nothing at all.

Q. You took no steps yourself to have your name withdrawn from the firm?

A. No, sir—that is I took no steps as to having the name changed.

Q. Have you ever acted as agent in any other capacity for the firm of Stoddard Brothers Lumber Company except in negotiating these loans?

A. Not that I remember.

Q. Have you ever made a purchase of any merchandise for them? A. No, sir.

Q. Have you ever consulted with anyone else in regard to the business?

A. Not that I remember.

Q. When did you first discover that there was a mistake on the books of the firm in regard to your account?

(Testimony of George Stoddard.)

A. It was the fall of 1906—well, it was on the first of the year—it was the fall of 1906 or the first of 1907.

Q. You knew you had notes of Stoddard Brothers Lumber Company which were not entered upon their ledger?

A. I knew this way; I saw the amount of the bills payable and I knew it was not enough.

Q. Did you ever make a written request to that firm to enter upon their ledger your credits?

A. Yes, sir, I sent them a statement.

Q. When did you send that statement?

A. I think the first of the year 1907.

Q. The first of the year 1907?

A. Yes, sir.

Q. In the testimony of Mr. A. K. Stoddard he said emphatically that the first written request he ever received from you was in December, 1907, after these letters of insolvency had been sent to the creditors?

A. That is not so. Well, now, I will verify that. Whether I wrote or whether I gave it to him when I was there, and at that time—

Q. What I want to know is as to a written statement.

A. I would not say positive as to that, whether I gave him a statement showing the amounts or whether I mailed it to him, I wouldn't say.

Q. What I want to know is whether you gave him a written statement before December, 1907?

A. Yes, sir, he got a statement before December.

(Testimony of George Stoddard.)

Q. A written statement?

A. Well, he got a statement but it was either given to him personally or sent to him.

Q. Was it written?

A. Well, it would have to be written because it was figured up.

Q. You don't seem to be very clear on that?

A. Well, I would say it was written.

Q. But you are not positive of that?

A. Yes, I am positive, because I remember writing it out; whether I handed it to him personally or mailed it I don't know.

Q. Did you ever make out a written statement as to your credits before December, 1907?

A. Yes, sir.

Q. Then, Mr. A. K. Stoddard was mistaken?

Mr. FINN.—We object to that. One witness cannot pass on the statement of another.

Q. Did you ever take any steps to have your credits entered up on the ledger, except that statement?

A. No, sir, because I didn't know what was done; I left there after that.

Q. You were acquainted, then, with the condition of the firm business, your brother being interested there most of the time?

A. To some extent, yes, sir.

Q. And you have talked over his affairs with him?

A. Not as much as I would like.

Q. You were more familiar with the financial condition of the firm than any other?

(Testimony of George Stoddard.)

A. Yes, sir.

Q. And you were fully aware that the firm was always doing business under the name of Stoddard Brothers Lumber Company from the time of its inception to date? A. Yes.

Mr. CLINTON.—I think that is all.

Cross-examination.

(By Mr. GRIFFITHS.)

Q. How often during this period from 1897 to the date of insolvency were you in the habit of visiting your brother at Nampa?

A. Oh, I don't know. I have visited him a good many times; I have no idea.

Q. About how many times a year?

A. Sometimes not once and other times four or five or six times a year.

Q. You would go over the matters between you, would you not, the standing of the two firms?

A. There was no dispute on that because at the end of every year Stoddard Brothers of Baker City made them a full statement and it was always straightened up.

Q. Knowing the financial condition of Stoddard Brothers Lumber Company why was it that you never pressed them for any payment, always taking renewal notes, even for notes given in 1897?

A. Why, I pressed them as far as I could without forcing them. I didn't want to do that because I always felt that they had plenty to take care of everything, which they would have had had the pro-

(Testimony of George Stoddard.)

ceeds of the ranch been turned in there, as I supposed it would be.

Q. You had a second mortgage on this ranch?

A. Yes, sir.

Q. You knew that the business at Nampa was advertised to the world as Stoddard Brothers Lumber Company through the newspapers, did you not?

A. I knew that they bore that name, yes, sir.

Q. And that their advertisements ran locally in the newspapers at Nampa, did you not?

Mr. FINN.—We object to that as immaterial and will ask that the objection may run to all of this now.

A. I don't know that he did advertise.

Q. Do you know about the letter heads of the firm? A. Yes, sir.

Q. And you know that they were Stoddard Brothers Lumber Company of Nampa?

A. Yes, sir.

Cross-examination.

(By Mr. NEAL.)

Q. You think almost every year you visited Nampa one or more times?

A. Well, I think I did. Of course in the fore part I did not, but the latter part, the last eight or ten years I did.

Q. And you went to Nampa expressly at those times for the purpose of finding out how they were getting along?

A. Sometimes I did and sometimes I didn't.

(Testimony of George Stoddard.)

Q. You usually in the course of those visits looked over the books and tried to understand the business, did you not?

A. All I done was to kind of get a statement of what they were doing and their expenses was about all.

Q. You made no inquiries or comparison of the assets and liabilities?

A. No, sir, merely took A. K.'s word for it.

Q. When did you first find out that your notes were not entered?

A. At the time I mentioned; in the fall of 1906 I think or the spring of 1907; that is as I remember it.

Q. You took no steps to see that they were entered at that time?

A. Only as I stated. I made a written statement of them and either mailed them to A. K. or gave them to him.

Q. As a matter of fact your notes first appeared on their books during December, 1907, did they not?

A. I think so; that is my understanding now.

[Testimony of Fred G. Mock.]

FRED G. MOCK, duly called, sworn and examined, testified as follows:

Direct Examination.

(By Mr. GRIFFITHS.)

Q. How long have you resided in Nampa?

A. Since December 21, 1891.

(Testimony of Fred G. Mock.)

Q. Were you acquainted with the firm of Stoddard Brothers Lumber Company of Nampa during the years of its existence in Nampa?

A. Personally acquainted with A. K. Stoddard; I never met any of the other Stoddard Brothers until some years later; don't know just what year it was now.

Q. Do you know the reputation that firm had as to who its members were or whether George Stoddard of Baker City and La Grande was a member of that firm or not during that time among the people generally in Nampa?

Mr. FINN.—We object to that as incompetent, irrelevant and immaterial; you cannot prove a fact by hearsay.

Mr. CLINTON.—I, L. F. Clinton, as attorney in fact for the American Steel and Wire Company, do hereby amend my objection to the allowance of the George Stoddard claim for the reason that George Stoddard is a member of the firm of Stoddard Brothers Lumber Company, or, if not, has so conducted himself in general with respect to the world at large that he has induced creditors, acting with reasonable diligence, to rely upon his actions and to consider him a member of said firm and to advance credit upon the faith of his being a member.

A. I could not state positively who the members were until about four years ago.

Q. Excuse me, Mr. Mock, the question is not as to what you know as to who the members are. The question is, do you know what the people of Nampa generally supposed the members to be?

(Testimony of Fred G. Mock.)

A. Well, it was generally conceded that it was Stoddard Brothers, but what Stoddard Brothers I am not prepared to state; there are more than two of the Stoddard Brothers.

Mr. GRIFFITHS.—That's all.

Witness excused.

[Endorsed]: Filed Apr. 15, 1909. A. L. Richardson, Clerk.

[Petition for Appeal and Order Allowing Same.]

In the District Court of the United States, District of Idaho, Central Division.

IN BANKRUPTCY.

In the Matter of the Estate of STODDARD BROTHERS LUMBER COMPANY, a Partnership Composed of ALEXANDER A. STODDARD and CHARLES MOSLANDER, a Bankrupt.

TRUSTEE'S PETITION OF APPEAL ON THE ALLOWANCE OF THE GEORGE STODDARD CLAIM.

Fred G. Mock, the trustee of the above-named bankrupt, conceiving himself aggrieved by the order and judgment made and entered herein on the 10th day of April, 1909, in the above-entitled proceeding wherein and whereby it was adjudged that the claim of George Stoddard against the estate of the above-named bankrupt be allowed and that the objections of the said trustee thereto be dismissed, does hereby appeal from such order and judgment

to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herein, and he prays that this appeal may be allowed and that a transcript of the proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

JOHNSON and JOHNSON,
L. F. CLINTON,

Attorneys for Trustee, Appellant, 112 N. 6th Street,
Boise, Idaho.

The foregoing petition on appeal is granted and the claim in appeal herein is allowed.

Dated Boise, Idaho, April 17th, 1909.

FRANK S. DIETRICH,
United States Judge.

[Endorsed]: Filed April 17th, 1909. A. L. Richardson, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

In the Matter of STODDARD BROTHERS LUMBER COMPANY, a Bankrupt.

Assignment of Errors.

And now comes Fred G. Mock, trustee of the above-named bankrupt by Johnson & Johnson, and L. F. Clinton, his attorneys, and files the following assignment of errors upon which he will rely on his appeal from the order and judgment entered herein on the 10th day of April, 1909.

First: That the District Court of the United States in and for the Central Division of the District of Idaho erred in that it did not sustain the order of the referee postponing the George Stoddard claim until other firm creditors were paid in full with interest.

Second: That said Court erred in that it did not sustain the order of the referee that George Stoddard is estopped to deny that he is a partner in the firm of Stoddard Brothers Lumber Company, the bankrupt.

Third: That the said Court erred in that it did not sustain the order of the referee that George Stoddard has never withdrawn from the said firm.

Fourth: That the said Court erred in that it did not sustain the order of the referee that the two \$6,000 notes, exhibits 5 and 6, signed by A. K. Stoddard and Charles Moslander are individual notes and not partnership obligations and as such are not provable against the firm assets along with claims of firm creditors.

Fifth: That the said Court erred in that it did not adjudge that George Stoddard has so held himself out as a partner in said firm in such a public manner and for a time so long continued as to justify the inference as a matter of fact, that the creditors dealing with the partnership knew it and relied upon it without direct testimony to that effect.

Sixth: That the said Court erred in not adjudging that George Stoddard has been guilty of fraud as to creditors by knowing of the nonentry and not having entered upon the firm books his present

claim which was omitted from statements of assets and liabilities sent out by the bankrupt firm of creditors down to time of insolvency.

Seventh: That the said Court erred in not posting to the payment of firm creditors \$5,000, with interest at 8% per annum from March 1st, 1897, to September 30th, 1908, amounting to \$9,054, representing an individual debt of A. K. Stoddard.

Eighth: That the said Court erred in that it did not adjudge that the said proof of claims consisting of the following items is insufficient to comply with section 57 of the Bankruptcy Act of 1898, relating to proof of claims:

Dec. 18, 1905, To cash paid Zion			
Sav. Bank.....	\$420.00		
Interest on same to 9/30/08	81.83		
			501.83
Dec. 22, 1905, To cash paid F. J.			
Church	400.00		
Int. on same to Sept. 30/08	77.63		
			477.63
May, 1, 1906, To cash paid La			
Grande Nat'l. Bank.....	58.80		
Interest	10.65		
			69.45
March 17, 1906, To cash paid			
Wm. Church.....	133.30		
Interest	23.66		
			156.96
June 20, 1906, To cash paid			
David Eccles.....	1281.68		
Interest	206.35		
			1488.03

Sept. 7, 1906, To cash paid		
Desert Sav. Bank.....	787.50	
Interest	58.49	
		845.99
May 9, 1908. To cash paid J.		
Deere Plow Co.,.....	432.15	
Interest	7.20	
		439.35
		<hr/>
Total.....		\$3979.24

Ninth: That the said Court erred in not postponing to the payment of firm creditors notes 8, 9 and 10, for \$5,000 each given for money borrowed in October, 1901, and not entered upon the bills payable of the bankrupt firm until after December 23d, 1907, the date of the letter of insolvency to creditors.

Wherefore, the said trustee prays that the said order and judgment be reversed and that the said District Court for the Central Division of the District of Idaho may be ordered to enter an order reversing the said order and judgment and affirming the order of the referee, with costs to the trustee.

JOHNSON & JOHNSON,
L. F. CLINTON,
Attorneys for Trustee, Appellant.

[Endorsed]: Filed April 17th, 1909. A. L. Richardson, Clerk.

[Citation on Appeal—Original.]

United States of America,
Ninth Judicial Circuit,
District of Idaho,—ss.

To George Stoddard, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, in the district and circuit above named, on the 15th day of May, 1909, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Central Division of Idaho, wherein Fred B Mock, as trustee of Alexander K. Stoddard and Charles Moslander, composing the firm of Stoddard Brothers Lumber Company, bankrupts, is the appellant, and you are the appellee, to show cause, if any there be, why the judgment and order in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the City of Boise in the district and circuit above named, this 17th day of April, in the year of our Lord one thousand nine hundred and nine, and the Independence of these United States, the one hundred and thirty-third.

FRANK S. DIETRICH,
United States District Judge.

Service of the foregoing citation accepted this 20 of April, 1909.

HAWLEY, PUCKETT & HAWLEY,
Attorneys for George Stoddard, Claimant.

[Endorsed]: No. 310. In the District Court of the United States, Central Division, District of Idaho. In the Matter of Stoddard Brothers Lumber Company, Bankrupt. Citation. Filed April 20, 1909. A. L. Richardson, Clerk.

Praeceptum [for Transcript of Record].

Transcript, Sept. 30, 1908.

In the Matter of the Estate of STODDARD BROTHERS LUMBER COMPANY, a Bankrupt.

PARTS OF TRANSCRIPT TO BE PRINTED FOR CIRCUIT COURT OF APPEALS.

A. K. STODDARD'S TESTIMONY.

- Page 1.
- Page 2.
- Page 3. First 10 lines:
- Page 4. Lines 19 to 27 inclusive and lines 32 and 33;
- Page 5. Lines 1 to 7 inclusive and lines 26 to 31 inclusive;
- Page 6. Lines 24 to 30 inclusive;
- Page 7. Lines 1 to 16 inclusive.
- Page 8. Lines 16 to 18 inclusive—lines 21 to bottom of page;
- Page 9. Lines 23 to 27 inclusive;
- Page 10. Lines 25 to bottom of page;
- Page 11. Lines 1 to 5 inclusive;
- Page 32. Lines 25 to bottom of page;
- Page 34. Lines 5 to 11 inclusive;
- Page 35. Lines 1 to 28 inclusive; line 33;

- Page 36. Lines 1 to 6 inclusive;—lines 12 to bottom of page;
- Page 37. Lines 8 to 22 inclusive;
- Page 39. Lines 19 to 24 inclusive;
- Page 41. Lines 1 to 29 inclusive;
- Page 42. Lines 15 to 23 inclusive;
- Page 44. Lines 18 to 23 inclusive;
- Page 45. Lines 22 beginning “I came here” to bottom of page;
- Page 46. Lines 3 to 24 inclusive;

GEORGE STODDARD’S TESTIMONY.

- Page 51. Lines 1 to 26 inclusive;
- Page 53. Lines 1 to 11 inclusive;
- Page 54. Lines 29 to bottom of page;
- Page 55. Lines 1 to 10 inclusive;
- Page 56. Lines 24 to 27 inclusive;
- Page 58. Lines 1 to 17 inclusive;
- Page 59. Lines 14 to bottom of page;
- Page 60. Lines 1 to 7 inclusive; 11 to 17 inclusive; 4 last lines;
- Page 71. Lines 21 to 24 inclusive;
- Page 72. Lines 11 to bottom of page;
- Page 75. Lines 14 to 24 inclusive;
- Page 76. Lines 1 to 20 inclusive;
- Page 79. Lines 4, 5, and 6;
- Page 81. Lines 13 to 27 inclusive;
- Page 84. Lines 19 to 25 inclusive;
- Page 86. Lines 14 begin “I object” to bottom of page;
- Page 87.
- Page 88.

Transcript, January 6th, 1909.

GEORGE STODDARD'S TESTIMONY.

- Page 1.
- Page 6. Lines 12 beginning "In order that you not" to bottom of page;
- Page 7. Lines 1 to 5 inclusive; lines 25 to 28 inclusive, to bottom of page;
- Page 8.
- Page 9.
- Page 10.
- Page 11. Lines 1; lines 13 to bottom of page;
- Page 12. Lines 1 to 18 inclusive;
- Page 14. Lines 11 to 26 inclusive;
- Page 15. Lines 1 to 3 inclusive; lines 19 to bottom of page;
- Page 16. Lines 1 to 5 inclusive; lines 28 to bottom of page;
- Page 17.
- Page 18.
- Page 19.
- Page 20.
- Page 21. Lines 11 to 16 inclusive;
- Page 22. Lines 12 to 25 inclusive;
- Page 23. Lines 19 to 27 inclusive;
- Page 24. Lines 23 to bottom of page;
- Page 25.
- Page 26. Lines 1 to 30 inclusive;
- Page 27.
- Page 28. Lines 1 to 10 inclusive;
- Page 30. Lines 29 to bottom of page;
- Page 31. Lines 9 beginning "You may state" to line 18 inclusive;

- Page 32. Cross-examination to bottom of page;
 Page 33.
 Page 34.
 Page 35.
 Page 36.
 Page 37.
 Page 38.
 Page 39.
 Page 40. Lines 1 to 8; lines 14 to bottom page;
 Page 41. Lines beginning "You knew that the
 business" to bottom of page;
 Page 47. Begin line 12 cross-examination "You
 think almost every year you visited
 Nampa" to bottom of page;
 Page 48. Lines 7 to 17 inclusive;
 Page 50.
 Page 51.

Service of a true copy of the foregoing accepted
 this 24th day of May, 1909.

C. H. FINN,
 Atty. for George Stoddard.

*In the Circuit Court of Appeals for the Ninth Cir-
 cuit.*

In the Matter of the Estate of STODDARD
 LUMBER COMPANY, Bankrupt.

**[Admission of Service of Statement of] Parts of
 Record Upon Which Appellant Relies.**

I, C. H. Finn, Attorney for George Stoddard, who
 is the adverse party or appellee in the above-entitled
 proceedings, do hereby acknowledge service on this

24th day of May, 1909, of the foregoing and within statement from the appellant as parts of the record on appeal which said appellant thinks necessary for the consideration thereof and which the said appellant will file with the clerk of the above-entitled court, as the record on such appeal.

Dated La Grande, Oregon, May 24th, 1909.

C. H. FINN,

Attorney for Respondent, George Stoddard.

[Endorsed]: Filed May 25th, 1909. A. L. Richardson, Clerk.

[Return of Clerk U. S. District Court.]

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal] Attest: A. L. RICHARDSON,
Clerk.

*In the District Court of the United States for the
District of Idaho.*

In the Matter of the Estate of STODDARD
BROTHERS LUMBER COMPANY.

Clerk's Certificate [to Transcript of Record].

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages from 1 to 83, inclusive, contain true

and correct copies of the Adjudication, Order Disallowing Claim of George Stoddard, Petition and Specification of Errors, Certificate by Referee to Judge, Opinion, Judgment, Portions of Testimony of A. K. Stoddard, George Stoddard and Fred G. Mock, Trustees's Petition of Appeal on the Allowance of the George Stoddard Claim, Assignment of Errors, Citation, Praecipe for Portion of Testimony, Return to Record and Clerk's Certificate, in the above-entitled matter, which together constitute the transcript of the record on appeal herein.

I further certify that the cost of the record here amounts to the sum of \$48.30, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this 28th day of May, 1909.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 1725. United States Circuit Court of Appeals for the Ninth Circuit. Fred G. Mock, as Trustee of Alexander K. Stoddard and Charles Moslander, Composing the Firm of Stoddard Brothers Lumber Company, Bankrupts, Appellant, vs. George Stoddard, Appellee. In the Matter of the Estate of Stoddard Brothers Lumber Company, a Bankrupt. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Central Division.

Filed June 11, 1909.

F. D. MONCKTON,
Clerk.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

FRED G. MOCK, as Trustee of ALEXANDER
K. STODDARD and CHARLES MOS-
LANDER, Composing the firm of STOD-
DARD BROTHERS LUMBER COMPANY,
Bankrupts,

Appellant,

vs.

GEORGE STODDARD,

Appellee.

*In the Matter of the Estate of STODDARD BROTHERS
LUMBER COMPANY, a Bankrupt.*

BRIEF AND ARGUMENT OF APPELLANT

*Upon Appeal from the United States District Court for the
District of Idaho, Central Division.*

JOHNSON & JOHNSON,

L. F. CLINTON,

Solicitors for Appellant.

Filed.....1909.

.....*Clerk.*

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

FRED G. MOCK, as Trustee of ALEXANDER
K. STODDARD and CHARLES MOS-
LANDER, Composing the firm of STOD-
DARD BROTHERS LUMBER COMPANY,
Bankrupts,

Appellant,

vs.

GEORGE STODDARD,

Appellee.

*In the Matter of the Estate of STODDARD BROTHERS
LUMBER COMPANY, a Bankrupt.*

BRIEF AND ARGUMENT OF APPELLANT

*Upon Appeal from the United States District Court for the
District of Idaho, Central Division.*

STATEMENT OF CASE.

This is a suit brought by appellant, the trustee in bank-
ruptcy of the estate of Stoddard Brothers Lumber Com-
pany, to have postponed to the payment of firm creditors
the claim of George Stoddard which in its entirety was
so postponed by the Referee in bankruptcy (Trans. pp.
3-8) and allowed to the extent of \$46,651.93 by the Dis-
trict Judge (Trans. pp. 25-27).

The above-named partnership was organized in March,

1896, by George and Alexander K. Stoddard under the name of Stoddard Brothers Lumber Company and has conducted its business without any change in the firm name from the time of its inception to date. A year or so after the formation of the firm, Charles Moslander acquired an interest therein (Trans. p. 30) and two years after the admission of Moslander, George Stoddard's alleged withdrawal from the firm took place. (Testimony of A. K. Stoddard, trans. p. 30.) By the testimony of George Stoddard his alleged withdrawal was March 1st, 1897, four years previous (Trans. p. 65).

The testimony of the two brothers as to the time of the alleged withdrawal of George Stoddard is hopelessly irreconcilable. No definite arrangement for the disposal of George Stoddard's half interest in the firm was made, no agreement of dissolution was drawn up, Moslander was completely ignored, and no notice of George Stoddard's withdrawal was published in any of the local papers (testimony of appellee, Trans. p. 67), his withdrawal consisting merely of a tacit understanding with his brother, A. K. Stoddard, Moslander not even being consulted, George Stoddard merely "dropping out" (Trans. p. 7). Neither letters to creditors giving notice of the change in the firm were sent out, nor notice of any kind given them; to use the words of A. K. Stoddard: "We never stopped to think about notice to creditors" (Trans. p. 31). It is claimed that in making reports to Bradstreet and Dunns afterwards George Stoddard was not included as a member but it was not reported to them that he had retired from the firm nor was the fact that Moslander had become interested reported (Trans. p. 31). The bankrupt firm from time to time mailed to their creditors what are

termed credit slips, which is a general custom adopted by merchants, listing its assets and liabilities as a basis for obtaining credit, and such reports of their condition down to the time of bankruptcy stated the firm's indebtedness to George Stoddard to be \$16,000 (Trans. pp. 32-33), but when claims were filed for allowance the claim of appellee, George Stoddard, was \$51,026.93, to the allowance of which all other creditors objected.

The books of the firm contain no record whatever of any of the transactions between it and George Stoddard (Trans. p. 31), but the notes constituting his entire claim with the exception of \$3,979.24 were first entered upon the firm's books in December, 1907 (testimony of George Stoddard, Trans. p. 75), and after the letter of insolvency mailed to creditors on December 23d, 1907 (Trans. p. 45), which was the time of the first request of George Stoddard to have his claims so entered, and George Stoddard has always known of the previous non-entry as he frequently looked over the accounts of the firm (Trans. p. 41).

Appellee paid accounts for the firm as late as the year 1907 (Trans. p. 32), has always acted as its financial agent (Trans. p. 68), personally negotiating all the company's loans, signing their notes as a joint maker, though claiming to have signed them merely as surety, acting in such capacity as he himself states, because the money could be obtained only upon the strength of his own personal credit (Trans. p. 69).

George Stoddard has at this time outstanding his personal notes for money borrowed to pay certain notes of Stoddard Brothers Lumber Company (Trans. p. 69). He has always known that the business was advertised to the world as Stoddard Brothers Lumber Company, that its

letter heads bore that name (Trans. p. 74), and he took no steps to have his name withdrawn from the firm (Trans. p. 70), and frequently made trips to Nampa to the firm's place of business to get statements of what it was doing and its current expenses of operating (Trans. p. 75).

As to the two \$6,000 notes presented for allowance and signed by A. K. Stoddard and Charles Moslander and not by the firm, they were executed in that form because as George Stoddard says: "I thought the individual signatures were really better than the company's signature" (Trans. p. 52).

Charles Moslander has never been identified in any way with Stoddard Brothers Lumber Company, but has been in active control of Stoddard and Moslander in Wyoming, which partnership consisting of a ranch has always been listed by the bankrupt firm as one of its assets and valued at from fifty to seventy thousand dollars (Trans. p. 36). This ranch is claimed to have been sold a few months before the letter of insolvency to creditors for thirty thousand dollars, George Stoddard voluntarily releasing a \$12,000 mortgage he held upon same. Two notes amounting to \$11,625 on which he was surety were paid out of the proceeds, but the balance of the alleged purchase price is unaccounted for.

SPECIFICATION OF ERRORS.

Appellant specifies the following errors upon which it will rely upon this appeal, based on the assignment of errors heretofore duly filed (Trans. pp. 78-81).

1. The Court erred in that it did not sustain the order of the referee postponing the entire claim of appellee to the payment of firm creditors.

2. The Court erred in that it did not decree that appellee has been guilty of fraud as to all creditors by knowing of the non-entry and not having entered upon the firm's books his present claims which were omitted from statements of the assets and liabilities sent out by the bankrupt firm as a basis for credit down to time of insolvency and entered upon the books at the request of appellee after letters of insolvency were mailed to creditors, December 23rd, 1907.

3. The Court erred in that it did not sustain the order of the referee that the two \$6,000 notes signed by A. K. Stoddard and Charles Moslander are individual and not partnership obligations and not provable pro rata with claims of partnership creditors.

ARGUMENT.

1. The Court erred in that it did not sustain the order of the referee postponing the entire claim of appellee to the payment of firm creditors.

No individual members of the partnership were adjudged bankrupts, the adjudication relating solely to the partnership as an entity regardless of the personality of the individual members. The petition prayed for an adjudication of the firm only and that alone was granted, the reciting of Alexander K. Stoddard and Charles Moslander as the partners being a mere matter of form, the one having always acted as manager for Stoddard Brothers Lumber Company, while Charles Moslander acted in the same capacity for Stoddard and Moslander of Wyoming, the latter being an asset of the former (Trans. p. 36). Adjudication of District Court of the United States for the Central Division, District of Idaho (Trans. p. 2).

Under the bankruptcy act of July 1st, 1898, a partnership is a distinct entity and owes its debts apart from the individual debts of its members and may be adjudged bankrupt, though the partners are not so adjudicated.

In re Bertenshaw, 157 Fed. 363.

The rule is well established that where the assets of a partnership are in the hands of a court of equity for distribution to the parties entitled, such assets must be first applied to the payment of the firm creditors before any portion can be applied to the claims of the individual partners or their creditors or those estopped to deny the partnership relation as between themselves and third persons.

Amsinck vs. Bean, 22 Wall. 395.

Bunn vs. Timberlake, 104 Ala. 263.

Leedom vs. Ham (Cal. 1897), 48 Pac. 222.

Broadway Nat'l Bank vs. Wood, 165 Mass. 312.

Deveney vs. Mahoney, 23 N. J. Eq. 247.

Hewitt vs. Northrop, 75 N. Y. 506.

This results from the lien which each partner has to have the assets applied first to the payment of firm debts and then to the payment of whatever may be due to him from the other partners on partnership account; the firm creditors being subrogated to this lien.

Case vs. Beauregard, 99 U. S. 119.

A partner who has sold goods or advanced money to the firm can not, in competition with firm creditors, prove a claim therefor.

In re Ervin, 109 Fed. 135.

We contend that appellee has so conducted himself with reference to creditors and the world at large that it does not lie in his mouth to dispute the fact that he is a partner in the bankrupt firm, even though no actual partnership relation exists between appellee and A. K. Stoddard and Charles Moslander, which we will not admit, as no written agreement of partnership was ever entered into originally (Trans. p. 39) and the books of the company do not contain any record of any transactions between the bankrupt firm and appellee (Trans. p. 31) and no written agreement of dissolution was ever drawn up (Trans. p. 67) and Moslander was never consulted or informed of George Stoddard's withdrawal (Trans. p. 67). Appellee furnished the money and merchandise with which the firm originally began business, A. K. Stoddard merely contributing his time (Trans. p. 37). Appellee paid accounts for the firm as late as 1907, ten years after his alleged withdrawal (Trans. p. 32) and has from the time of the firm's inception to date personally borrowed every loan the company has made, always acting as its financial agent (Trans. p. 68) and for the reason the money could only be borrowed by George Stoddard himself (Trans. p. 69), which is almost conclusive evidence of the fact that the world at large has always considered him the reliable solvent partner of the bankrupt firm and to whom they extended their credit. The financial transactions of the firm have been exclusively executed by appellee, his brother, A. K. Stoddard, merely managing the store itself.

There are outstanding at the present time George Stoddard's own personal notes for money borrowed to pay the Deseret Savings Bank an obligation due it from the firm of Stoddard Brothers Lumber Company (Trans. p. 69).

In 1901 George Stoddard borrowed \$15,000 from David Eccles and used the money himself (Trans. p. 43), which money was borrowed upon a firm note endorsed by appellee (Trans. p. 68) and George Stoddard was not charged with the \$15,000 by the bankrupt firm and knew that he was not charged with it (Trans. p. 45, testimony of A. K. Stoddard).

We understand that the question of notice to creditors previously doing business with the firm is not involved in this case as the decided weight of authority demands actual notice and publication of notice in a newspaper is not sufficient as to those persons.

Austin vs. Holland, 69 N. Y. 571.

The controlling issue here is whether appellee gave such notice of his retirement to relieve himself of future liability to subsequent creditors dealing with the firm. He admits and the uncontradicted evidence is to the effect that no notice of any kind was ever given creditors and we contend that one after having assumed a partnership relation is clothed with a legal liability from which he can relieve himself only upon public notice of some kind being given of his withdrawal. The only semblance or color of any notice of George Stoddard's withdrawal is the statement of A. K. Stoddard that after the alleged retirement of appellee his name was not included as a partner in the firm's reports to Dunns and Bradstreets, but no notice was even given to these commercial agencies that appellee had withdrawn (Trans p. 31).

Burden of proving notice of retirement from a partnership is upon the partner retiring.

Southwick vs. Allen, 11 Vt. 75.

Pursley vs. Ramsey, 31 Ga. 403.

Birkhead vs. De Forest, 120 Fed. 645.

Dixon National Bank vs. Spielman, 35 Ill. App. 184.

Reading Braid Co. vs. Stewart, 45 N. Y. Supp. 69.

Moore vs. Duckett, 91 Ga. 752; 17 S. E. 1037.

This principle of law is unquestioned.

Even though appelle had notified the mercantile agencies of his withdrawal it would have been insufficient notice of retirement and no evidence was introduced to show that any creditor was a subscriber to either agency.

Bank of Monongahela vs. Weston, 159 N. Y. 201;
54 N. E. 40.

The defense of notice is one which appellee in order to limit his liability is bound to establish and there is obviously no priority between third persons dealing with the firm and these mercantile agencies, had there been evidence that appellee had affirmatively notified them of his withdrawal, which he did not do.

Public notice in a newspaper published at the place of business is generally recognized as sufficient notice but this much at least is recognized as mandatory in the absence of proving some other notorious announcement.

Parsons on Partn. p. 413.

2 Collyer on Partn. Sec. 535.

Bates on Partn. Vol 2, Sec. 618, says: "As to non-dealers, as distinguished from former creditors, the law requires the notice to be by publication. The sufficiency of the publication is not defined, for no inexorable rule requires it to be by advertisement in a newspaper.

“In this country it is generally regarded sufficient and safest to insert the notice in a newspaper in the town where the partnership has its business and is always recommended. Though an occasional case seems to hold that publication by advertisement is essential.”

The Court below cited *Lovejoy vs. Spofford*, 93 U. S. 430, to the effect that it is not an absolute inflexible rule that there must be publication in a newspaper to protect a retiring partner.

We agree with this contention but an examination of the case will show that the real point decided was that evidence of a notorious announcement of withdrawal from a firm through the efforts of the retiring partner showing that business men generally, where the retiring partner resided, knew of the dissolution was evidence which should not be excluded from the jury.

George Stoddard exerted no efforts whatever to notify creditors in any way, but to the contrary has done everything since his alleged retirement to disprove it.

Simonds vs. Strong, 24 Vt. 642, seems to lay down the rule that it is well settled, both in England and this country, that a publication of retirement in some newspaper where the business is done is absolutely necessary in order to shield the retiring partner from liability for the future debts of the firm to those with whom they had no previous dealings, citing many cases in point.

Story on Partn. (6th Ed. Gray), page 289, says:

“The weight of authority seems now to be, that notice in one of the usual advertising gazettes of the place, where the business was carried on, when published in a fair and usual manner, is of itself notice of the fact to all persons,

who have not been previously dealers with the partnership, citing 3 Kent, 67, 68, to the same effect."

To the same effect is—

City Bank of Brooklyn vs. McChesney, 20 N. Y. 240.

Vernon vs. The Manhattan Company, 22 Wendall, Star Page 183, where at star page 194 Senator Verplank, referring to a retiring partner, says: "It is impossible for him to give direct notice of his withdrawal to every man who may have seen the name of his firm, or have accidentally received its checks or note. No man is held to impossibilities. But he does all he can do in such a case by withdrawing all the exterior indications of partnership, and giving public notice of dissolution in the manner usual in the community where he resides * * * so far as those are concerned who have had no direct intercourse with the firm, he does all that is in his power to prevent the continuance and abuse of such credit if he uses the same sort of means to put an end to that credit which may have caused it."

We think the evidence in this case is clear, decisive and uncontradicted to the effect that appellee has never legally withdrawn from the bankrupt firm and that the consequences of becoming a partner which are attributes imposed by law are still to be attached to him, and not having effected a legal retirement he can not have his claim against the bankrupt estate allowed pro rata with firm creditors.

As to George Stoddard's "holding out" as a partner, if he does not come within the intent and meaning of the two cases of Sun Insurance Company vs. Kountz Line, 122 U. S. 583, at page 594, and Thompson vs. Banks, 111 U. S.

529, at page 537, where they announce the doctrine that a holding out may be so public and long continued as to justify the inference as a fact without direct testimony to the effect that one dealing with the partnership knew it and relied upon it, then the doctrine of those cases is meaningless. The referee before whom the testimony was taken, held that "customers did, without doubt, sell goods to this firm on the credit of George Stoddard" (Trans. p. 7).

The Court below in reversing the order of the referee that appellee was estopped to deny he was a partner significantly did so "without prejudice to the right of any creditor in a proper proceeding to assert the responsibility of the claimant George Stoddard * * * by reason of the fact that he held himself out as a member of the firm" (Trans. p. 20).

The burden should be imposed upon appellee to show that he has withdrawn from the firm as he never claimed to be a dormant or unknown partner as the Court below intimated contrary to the testimony of appellee himself, there not being one scintilla of evidence of any such contention, but says that he owned a one-half interest, furnished the original capital and has managed the finances of the business from the time of its organization to date.

Cases below hold, upon the ground of public policy, that a person holding himself out as a partner is liable as such to all the world irrespective of the creditors' actual knowledge or ignorance of such holding out.

Mershon vs. Hobensack, 22 N. J. L. 372.

Poillon vs. Secor, 61 N. Y. 456.

Pringle vs. Leverich, 48 N. Y. Super. Ct. 90.

Knowledge or consent may be inferred from circumstances such as advertisements, shop bills, signs, cards or various other acts from which it is reasonable to infer that the holding out was with one's authority, knowledge or assent.

Fletcher vs. Pullen, 70 Md. 205.

Where the business is continued in the old name with the consent or acquiescence of the retiring partner, he may be liable on the ground of holding out even though a notice of dissolution was published.

Thayer vs. Gon, 91 Wis. 90.

Wait vs. Brewster, 31 Vt. 516.

Gammon vs. Huse, 100 Ill. 234.

Re Kreuger, 2 Lowell (U. S.), 66; 19 Fed. Cases, 7941.

Flemming vs. Dorn, 34 Ga. 213.

Elleson vs. Sexton, 105 N. C. 356.

Speer vs. Bishop, 24 Ohio, 598.

A firm name is more often than less a drawing card in itself for credit and the use of same may always be enjoined by a retiring partner.

The identification of Charles Moslander with the firm at the time of appellee's alleged retirement and ever since has been carefully guarded against. The name of Stoddard Brothers Lumber Company with its true significance of solvency because of George Stoddard's financial reputation has never been allowed to be altered.

Should two conniving brothers, one with money and one without it, conspire to defraud the public by attracting credit upon the strength of the one's financial reputation,

at the same time protecting his liability, we can conceive of a no more perfect method than the one adopted by Alexander K. and George Stoddard.

2. The Court erred in that it did not decree that appellee has been guilty of fraud as to all creditors by knowing of the non-entry and not having entered upon the firm's books his present claims, which were omitted from statements of the assets and liabilities sent out by the bankrupt firm as a basis for credit, down to time of insolvency and entered upon the books at the request of appellee after the letters of insolvency were mailed to creditors December 23rd, 1907.

A. K. Stoddard testified (Trans. p. 32) that they made several credit statements during the year 1906 to people they were owing and that in those credit statements they reported that the firm owed George Stoddard \$16,000 and (Trans. p. 33) that this was substantially the statements sent out up to December 23rd, 1907, when they notified creditors that they were insolvent. No part of appellee's claim is for goods furnished or money paid out after 1906, with exception of \$432.15 paid May 9th, 1908, to John Deere Plow Company.

Upon page 38 of the transcript is the further testimony of A. K. Stoddard that their total bills payable, according to a credit slip sent the American Steel and Wire Company in 1906, were \$21,000, that he discovered the mistake the same year but did not notify the company as he thought it was not necessary.

Page 43 of the transcript reveals the statement of A. K. Stoddard that between the last portion of December,

1907, and January 1st, 1908, there is a large increase in their bills payable and when asked to account for it said there were bills payable outstanding which had not been included and that they were notes in favor of George Stoddard, one note of \$15,000 for money borrowed in 1901, which had never been entered upon the firm's ledger, that appellee actually received this \$15,000, credited the firm or account and then the firm now makes an entry of \$15,000 again in George Stoddard's favor.

In place of the firm's debiting appellee he was credited with that amount, but not until six years afterwards and subsequent to the sending out of firm's letters of insolvency.

Again referring to this omission of appellee's notes from the firm's bills payable, upon page 44-45 of the transcript A. K. Stoddard further testified:

Q. And you deliberately left those bills payable off your ledger?

A. I did it carelessly, not deliberately.

Q. All we want to know is that you left them off. George Stoddard knew of that discrepancy at the same time?

A. I guess he did.

Q. He did not ask to have those notes put on the ledger, did he?

A. I don't remember that he did.

Q. He is not charged with that \$15,000. George Stoddard knew that he was not charged with it, did he not?

A. Yes, sir.

Continuing, witness testified that the first written request ever received from George Stoddard to put these credits on the firm's ledger was after the notice to creditors had been sent out that the firm could not meet its obliga-

tions, and that appellee knew perfectly well how the accounts stood as he was there and looked them over at different times (Trans. p. 45).

If appellee's claims were legitimate and he knew it and had knowingly permitted their omission from the firm's books for six or seven years, why did he insist upon their entry after they decided to go into insolvency? The mere fact that he personally wrote to his brother A. K. Stoddard to have them entered would be conclusive in the absence of other evidence, that he, appellee, had known of their omission continuously. Appellee's acts are not compatible with good faith.

Upon page 71 of the transcript, in answer to question, "You knew you had notes of Stoddard Brothers Lumber Company which were not entered upon their ledger?" Appellee replied, "I knew this way; I saw the amount of the bills payable and I knew it was not enough." Continuing on page 75 of the transcript he testifies that his notes first appeared on the company's books during December, 1907, concerning which there is no conflicting evidence, nor is it disputed in any way by either A. K. Stoddard or George Stoddard. Appellee further stated that he was more familiar with the financial conditions of the firm than any other (Trans. pp. 72-73). Unless George Stoddard were actively financing the bankrupt firm how could he by looking at the bills payable see that they were incorrect and know that his notes were not included?

Had A. K. and George Stoddard been individually adjudged bankrupts neither would be entitled to a discharge, as the bankrupt firm obtained property on credit on materially false statements in writing and are within the purview of Bankr. Act, July 1st, 1898, c 541, Section 14 b,

as amended by act of Congress, February 5th, 1903, c 487, 32 Stat. 797 (U. S. Comp. Stat. Supp, 1907, page 1026).

In *re Pomerantz & Hopkins*, 168 Fed. 444, holding that a partnership making no entry in the books of the business of indebtedness for money borrowed from various persons, mostly relatives of the partners, and omitted from credit statements, justifies a finding that the partners "with intent to conceal their financial condition, destroyed, concealed or failed to keep books of account or records from which such condition might be ascertained" and a denial of their discharge.

That such mistakes are made in good faith is immaterial.

In *re Shaffer*, 169 Fed. 724.

A creditor who has padded his account with the intention of thereby obtaining an advantage over other creditors is not entitled to allowance of any part of his claim.

In *re Flick*, 105 Fed. 503.

Appellee held a \$12,000 mortgage upon the Wyoming ranch of Stoddard and Moslander, which ranch was an asset of the bankrupt firm and valued at from fifty to seventy thousand dollars (Trans. p. 36), which mortgage appellee released voluntarily, the bankrupt firm receiving but \$11,625 of the sale price, paying two notes aggregating that amount upon which appellee was surety.

The only consideration appellee thereby received was the release of a possible future liability because of his having endorsed notes to the amount of \$11,625. He could have refused to release the mortgage upon any condition other than that his mortgage be paid and the notes for \$11,625

be paid. The ranch was sold for \$30,000 and A. K. Stoddard had nothing to say about it (Trans. p. 37), and does not know whether it was for the whole or part of the ranch.

George Stoddard and his brother, Alexander K., deliberately, according to their own testimony, disposed of an asset of the bankrupt estate valued at fifty to seventy thousand dollars, alleged to have sold it for \$30,000 and to have received but \$11,625, voluntarily releasing a \$12,000 mortgage and have not accounted for the disposal of the balance of this alleged purchase price which was never diverted to increase the assets of the bankrupt firm to which the proceeds belong. This reported sale took place above five months before they notified their creditors that they were insolvent and had the sale been conducted in a bona fide way and the proceeds turned into the firm the partnership could never have been declared bankrupt.

Even appellee himself relied upon the ranch as one of the most reliable assets of the bankrupt firm as is shown upon page 73 of the transcript, where, in answer to question "knowing the financial condition of Stoddard Brothers Lumber Company, why was it that you never pressed them for any payment, always taking renewal notes, even for notes given in 1897? replied, "I always felt they had plenty to take care of everything, which they would have had had the proceeds of the ranch been turned in there" (Trans. pp. 73-74).

The only obvious reason that the proceeds were not turned into the firm was because appellee did not so desire as A. K. Stoddard testified he had nothing to say about the sale of the ranch, that he merely signed the deed as requested, George Stoddard and Moslander effecting the sale regardless of the wishes of A. K. Stoddard.

Regardless of appellee's being a member of the bankrupt firm, or estopped to deny that relationship, he is equitably estopped to prove in any event for a sum in excess of \$16,000, as this was the amount of his claim against the firm as reported to creditors in statements of its assets and liabilities down to the time of insolvency, A. K. Stoddard knowing this report was false and failing to notify creditors and appellee was aware of this as he knew the notes now presented for allowance were not entered on the books of the firm. It is a cardinal principle of equity that where one of two innocent parties must suffer by the act of another he who has made the loss possible shall suffer the burden. But appellee here does not even stand in the position of an innocent person but quite to the contrary.

Creditors can claim equitable estoppel against parties making reports to commercial agencies and not to them directly.

Irish America Bank vs. Ludlum, 49 Minn 344; 51
N. W. 1046.

The acts of A. K. Stoddard and appellee are badges of gross fraud upon creditors from the time of the organization of their firm to the culmination of the bankrupt proceedings.

3. The Court erred in that it did not sustain the order of the referee that the two \$6,000 notes signed by A. K. Stoddard and Charles Moslander are individual and not partnership obligations and not provable pro rata with claims of partnership creditors.

In the execution of these notes in the form of individual

obligations there was no mistake, accident, duress, or fraud. The uncontradicted evidence of appellee is that the notes were signed individually because he thought the individual signature was really better than the company's signature (Trans. p. 52).

This is conclusive that he relied upon and voluntarily accepted individual rather than firm obligations.

The Bankruptcy Act of 1898, section 5, (f) reads:

"The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership."

So construed in—

In re Rice, 164 Fed. 514.

There can be no marshalling of assets of the individual or the firm estates except where there is a surplus remaining after paying their respective creditors in full.

In re Henderson, 142 Fed. 588 at page 590.

In re Rice, 164 Fed. 509 at page 512.

The exception that where there are no firm assets and no solvent partners living, the firm creditors share *pari passu* with the individual creditors is now considered

ancient and inequitable; and the death knell to all exceptions to the broad rule that joint creditors share in joint assets and individual creditors in individual assets has been sounded by Judge Lowell in the Wilcox case now recognized as an historical monograph of great value.

In re Wilcox, 94 Fed. 84.

And followed in—

In re Mills, 95 Fed. 269.

In re Daniels, 110 Fed. 745.

Decided weight of authority favors this rule:

In re Janes, 133 Fed. 912.

In re Henderson, 142 Fed. 588; (affirmed), sub.
nom. Euclid Nat'l Bank vs. Union Trust Co.
149 Fed. 975.

The individual creditors are preferred against the individual assets and the firm creditors are preferred against the firm assets.

A mortgage given by one partner on partnership property, although with the consent of his co-partner, can not be enforced as against firm creditors in bankruptcy.

In re Blanchard, 161 Fed. 793 (1907), in which is found an able discussion of the distinction between individual and partnership debts under the present bankruptcy law, showing that the individuals and the partnership are distinct legal entities. Appellee is a preferred creditor against both the individual estates of A. K. Stoddard and Charles Moslander and had it appeared that their individual estates exceeded the assets of the bankrupt firm the appellee undoubtedly would have chosen to pursue them. This discloses the injustice of any other

than the above recognized rule which would allow the holder of notes signed by the individual partners to cast the loss either upon individual or firm creditors at his caprice.

If a creditor desires an option of proving either against the assets of the partnership or against the estates of the individual members he should be compelled to have executed to him a note signed by the partnership and indorsed by the partners individually. Otherwise it places the firm in a position dangerous to creditors for the reason that in making reports of its financial condition it may omit from the firm's bills payable, notes executed by the individual members and thus obtain credits upon a false basis. The commercial world is entitled to more protection than such a lax rule of law would allow.

To allow the proof of individual notes against the firm assets is to place a premium upon carelessness in dealing with partnerships for the reason that a holder of such notes stands better than the holder of firm notes where the individual estates of the members exceed the assets of the bankrupt firm. Under the present law a partnership is a distinct legal entity separate and apart from the members who compose it.

It is incredible that appellee would urge that these notes are firm obligations were the individual assets greater than the firm assets as it would be to his interest to prove the notes against the individuals and not against the firm, and the facts in this case would entitle appellee to do so. This unfairness to firm creditors is obvious.

The inconsistency of the holding of the court below can not be reasonably explained in decreeing that the four \$1,000 notes signed by A. K. Stoddard for goods furnished

the firm are personal obligations and not provable pro rata with claims of firm creditors but that the two \$6,000 notes for goods furnished the firm but signed by A. K. Stoddard and Charles Moslander are firm and not individual obligations. The four \$1,000 notes were not given for the purchase of appellee's interest as is shown by the uncontradicted evidence of A. K. Stoddard on page 34 of the transcript where he says he paid nothing for appellee's interest in the firm but that it was given to him "if there was anything gained," and this further testimony (Trans. p. 30), "George just dropped out and took an account of what he had furnished up to that time."

"If the obligation is given by the partners individually and not by the firm name, it is only provable against their individual estate, although the consideration passed to the firm."

Bump on Bankruptcy (7th Ed.), p. 222.

Collier on Bankruptcy (3rd Ed.), pp. 72, 73, says: "On the question whether an indebtedness is a firm or individual indebtedness where all the members have incurred a written obligation by signing their respective names, instead of the firm name, the weight of authority is that it is an individual indebtedness of each of the members of the firm, not a partnership indebtedness."

Id. Collier on Bankr. 4th Ed. p. 72.

Id. Collier on Bankr. 7th Ed. p. 135.

The text writers universally agree that individual notes of partners are not provable against firm assets in bankruptcy along with claims of firm creditors, though the consideration passed to the firm.

A joint note given by partners as individuals for money used in the partnership business, does not create a partnership debt.

Turner vs. Jaycox, 40 N. Y. 471.

Notes signed by both members of a partnership are not provable against the estate of the partnership in bankruptcy, though the consideration passed to the firm.

Stranse vs. Hooper, 105 Fed. 590.

In re Jones, 116 Fed. 431.

In re Webb, Fed. Cas. 17,313, 2 N. B. R. 614.

In re Herrick, Fed. Cas. 6,420, 13 N. B. R. 312.

In re Bucyrus Mach. Co. 4 Fed. Cas. 2,100, 5 N. B. R. 303.

In re Holbrook, Fed. cas. 6,588, 2 Lowell, 259.

A joint and several note by all the member of a firm is not strictly a partnership note, nor has it the same effect; nor could the holder, in case of insolvency, claim from the partnership funds.

Parsons on Partn. p. 215.

Even the priority of the United States does not extend so as to take property of partners from partnership effects to pay a separate debt due by partners to the United States where partnership effects are not sufficient to satisfy creditors of the partnership.

United States vs. Hack, 8 Peters, 271.

The Court in In re Jones (supra), at page 433, says: "The face of the notes, bond, or mortgage, is the best and conclusive evidence as to whom the credit was given, ex-

cept in case of fraud. Therefore the note or bond signed individually under the separate signatures and seals of R. N. Raper, T. C. Jones, Florence Jones, W. S. Cartwright and J. F. Engle, the contract being clearly expressed and no evidence of fraud in its execution, with no evidence on its face that the firm of Jones, Raper & Co. was a party to its execution it can not be proven as against the partnership assets of Jones, Raper & Co. until all the partnership debts have been paid in full."

It should distinctly appear that the signature is intended to bind the firm and such will not be the manifest intention unless the instrument is signed in the firm name.

Dan. Neg. Inst. 3rd. Ed. vol. 1, p. 330.

Thomson on Bills, 164.

Chitty on Bills (star page 57), 72.

The above authorities relate to notes signed by the individual members in the abstract, regardless of the payee's exercising any volition as to their execution in that form, while in this case appellee deliberately had them executed individually as he thought the individual signature better, obviously because of the value of the ranch of Stoddard and Moslander in Wyoming. The other notes presented by appellee for allowance are signed in the firm name.

The Court below (Trans. p. 22), says: "There is no reason to believe that if the legal effect of an instrument signed by the individuals severally had been called to the attention of the parties at the time, the notes would have been executed in their present form." We are under the impression that the consequences attached by law to one's acts are legal attributes not dependent upon what the

parties might have done had they been able to foresee the consequences. The fact remains that the notes were executed as individual obligations of appellee and because he preferred them in that form. Had nothing been said regarding the form, and there was no evidence in relation to it, it is more reasonable to believe they would have been executed in the firm name as the other notes were, and, naturally, in the course of business, would be.

We also call this Court's attention to the opinion of the Court below where it says (Trans. p. 22): "There is no showing that the members of the firm had property of any considerable value other than their interests in the joint enterprise and there is no apparent reason why the claimant should have preferred an individual obligation to a firm obligation. It is therefore thought that the referee correctly ruled in receiving such evidence; and it is concluded the evidence shows beyond doubt that the notes were intended to and represent firm and not individual obligations."

We are not concerned with why appellee should have preferred an individual to a firm obligation, but allege that the uncontradicted evidence and the notes themselves show that he did prefer individual obligations.

As to the referee's admitting evidence to prove the consideration passed to the firm the Court below erred in its conclusions by overlooking the record which undeniably shows that the referee did uphold the objections of the creditors to the admission of evidence to the effect that the \$6,000 notes were partnership obligations, but the referee acting according to his duty and practice in equity proceedings admitted the evidence over objections and passed upon the relevancy of it at the conclusion of pro-

ceedings before him and held the notes to be the individual obligations of A. K. Stoddard and Charles Moslander and not firm obligations (Trans. p. 5). The well recognized practice in equity proceedings as to the admission of evidence apparently escaped the attention of the Court below.

The Court below did not consider in announcing its interpretation of the parol evidence rule that no matter how it may be encroached upon as between the maker and payee of a note, that the same latitude for construction is not indulged in where the interests of third parties are at stake, and also that in the absence of fraud, accident or mistake the rule is the same in equity as at law that parol evidence is inadmissible to vary the absolute terms of a written contract.

The above authorities and text writers go beyond the facts of this case in holding the individual notes of partners not provable pro rata with firm creditors as in none of the cases referred to was it shown that the payee of the notes exercised any volition in regard to the form of execution, while here appellee chose the individual signatures and in justice to firm creditors should be compelled to seek recourse from the individual estates of the partners and be postponed to the payment of firm creditors in participating in the distribution of firm assets, even though appellee were an innocent creditor acting in a bona fide manner and had never been connected with the firm nor guilty of having entered upon the firm's books his credits after letters of insolvency were mailed to creditors knowing of their previous non-entry.

It is also significant that the two notes, while dated April 5th, 1904, are for lumber furnished eight or nine

years ago (referee's opinion, Trans. p. 5), which is consistent with no other conclusion than that an individual obligation was substituted for a firm obligation, if the firm was ever looked to at all.

We contend that the order of the referee postponing the entire claim of appellee to the payment of firm creditors should be affirmed and that the two \$6,000 notes signed by A. K. Stoddard and Charles Moslander be decreed the personal obligations of the members signing and not provable pro rata with firm creditors, but that in no event should appellee's claim be allowed in excess of \$16,000, his total claim listed upon statements of assets and liabilities mailed to creditors by the bankrupt firm down to the time of insolvency.

Respectfully submitted,

JOHNSON & JOHNSON AND
L. F. CLINTON.

Solicitors for Appellant.

S. H. 1 Jan 6
No. 1725

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FRED G. MOCK, as Trustee of ALEXANDER K.
STODDARD and CHARLES MOSLANDER,
Composing the firm of STODDARD BROTHERS
LUMBER COMPANY, Bankrupts,
Appellant,

vs.

GEORGE STODDARD,
Appellee.

In the Matter of the Estate of
STODDARD BROTHERS LUMBER
COMPANY,
a Bankrupt.

Brief and Argument of Appellee

Upon Appeal From the United States District Court for the District
of Idaho, Central Division.

CAMPBELL, METSON, DREW,
OATMAN & MACKENZIE,
Solicitors for Appellee.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FRED G. MOCK, as Trustee of ALEX-
ANDER K. STODDARD and
CHARLES MOSLANDER, Compos-
ing the firm of STODDARD BROTH-
ERS LUMBER COMPANY, Bank-
rupts,

Appellant,

vs.

GEORGE STODDARD,

Appellee.

In the Matter of the Estate of
STODDARD BROTHERS LUMBER COMPANY,
a Bankrupt.

BRIEF AND ARGUMENT OF APPELLEE

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO, CENTRAL DIVISION.

STATEMENT OF THE CASE.

The statement of the case contained in appellant's brief is in few particulars warranted by the evidence. For many of counsel's statements of fact we are unable to find any color of support in the evidence; others appear to be founded upon disconnected portions of the testimony not susceptible of the construction placed upon them by counsel.

The evidence in the case is brief and we shall hereafter make particular reference thereto, sufficient in our judgment to demonstrate how totally inadequate is the evidence to establish the facts stated by counsel in their statement of the case and evidently conceived by them as essential to the sustaining of their position.

The evidence we submit shows the following facts, which are treated of more in detail and by reference to the transcript hereinafter, viz :

That George Stoddard is not in fact, and has not been for more than eleven years prior to the taking of evidence, a member of the partnership; that in March, 1897, George Stoddard sold outright to his brother, A. K. Stoddard, his entire interest in the partnership, taking \$5,000.00 of the personal notes of A. K. Stoddard in payment therefor, at the time of his retirement. That since March, 1897, George Stoddard has occupied no position or relation with reference to said partnership other than that of a creditor thereof, and that George Stoddard has not done or performed any acts what-

ever, not entirely consistent with his position as a non-member of said partnership, and as a creditor only thereof. That at the time of George Stoddard's withdrawal there were no other creditors of said partnership, and that for that reason no formal notice of dissolution was ever given to creditors or published, and that no one of the present creditors having claims against the estate of the bankrupt was a creditor in any sum at the time of George Stoddard's withdrawal from the partnership, or had ever dealt with the bankrupt firm while George Stoddard was a member thereof; that George Stoddard had no control over the books of the firm and had nothing to do with the sending out of any credit statements by the bankrupt firm, and exercised no control over the same, and took no part directly or indirectly in misrepresenting in any manner the amount of his claim against the firm. That the two notes of \$6,000.00 each, signed by A. K. Stoddard and Charles Moslander, the two partners, and not by the firm, were in fact and were intended to be firm obligations. That the goods purchased therewith were delivered exclusively to the firm, and the firm alone profited thereby, and the fact that the same are signed by the individual partners and not in the firm name is under all the facts disclosed in the evidence a mere circumstance of negligible significance.

But we believe that independently of any questions of fact this appeal may be disposed of by this Court

solely on the consideration of the law as applied to the facts contended for by appellant, the truth of which may be for such purpose assumed.

ARGUMENT.

Appellant's argument is based upon the three following propositions:

1. That the entire claim of George Stoddard, appellee, in the sum of \$46,651.93, as allowed in the judgment of his Honor, Judge Dietrich, in the District Court of Idaho, should be disallowed for the reason that George Stoddard was at the time of the adjudication in bankruptcy a partner in the partnership of Stoddard Brothers Lumber Company, the Bankrupt; or that in case such relationship did not in fact exist, then that George Stoddard had held himself out as a member of such partnership in such a way as to render him liable as such; in either of which events it is contended that George Stoddard is not entitled to the payment of any claim against the partnership until after the payment of all other creditors.

2. That the two \$6,000.00 notes signed by A. K. Stoddard and Charles Moslander are individual and not partnership obligations.

3. That appellee has been guilty of fraud as to all creditors by reason of his alleged knowledge of the non-entry of his claim upon the firm's books, and his

failure to have such entry made, and the omission of the statement of his claim in the credit statements of the bankrupt firm, and the release of \$12,000.00 mortgage held by him; from which it is contended by appellant that the appellee is equitably estopped to prove a claim in excess of \$16,000.00, the amount of the claim of George Stoddard as stated in certain credit slips sent by the bankrupt firm to certain of its creditors.

Considering these points in their legal aspect as applied to the facts of the case as claimed by appellant, *seriatim*:

1. We do not find anything in appellant's brief indicating an unequivocal intention to contend that the evidence shows the existence of any actual partnership relation existing between appellee and the firm.

Counsel's argument under this head is confined to an attempt to show a "*holding out*" of himself as a partner on the part of George Stoddard; and the question of actual partnership relation was disposed of by the learned Judge of the District Court in the following words, contained in his opinion which treats the case in a comprehensive manner:

"1. A general objection running to all of the claims is that the claimant is in fact a member of the bankrupt firm. I do not find that this contention is supported by the evidence."

The burden of counsel's argument is that appellee has

so conducted himself with reference to creditors and the world at large, that he is estopped in this proceeding to deny an actual partnership relation. Obviously this proposition is based upon equitable estoppel and in order to give rise to the estoppel in question any particular creditor thinking himself aggrieved would have to first show an injury to himself arising out of the ostensible partner's actions, which injury to such particular creditor is the moving and sole cause for the interposition of the principle of estoppel.

Thus upon the withdrawal of one partner his failure to publish or otherwise give notice of his withdrawal renders him liable to any party extending credit to the partnership thereafter upon the inducement of the supposed connection of the retired partner with the partnership. Obviously the failure to give such notice does not in fact or in law operate to render such retiring partner a member of the partnership after his actual withdrawal. It is simply that where a third party has been injured by the retired partner's negative "*holding out*" of himself as a partner by his failure to give notice of his withdrawal, then such retired partner is estopped to deny the partnership relation; this does not give rise, however, even to any fiction of law that the partnership relation still exists.

It is on this point we submit that counsel have in their argument under this head confused the proposition of actual partnership relation and the "*holding*

out" on the part of the retired partner, such as to estop him from denying the partnership relation.

Counsel appear to contend that if facts appear showing a "*holding out*" of himself as a partner on the part of George Stoddard after his withdrawal, such facts alone are sufficient to render him liable to all subsequent creditors of the firm regardless of whether in any particular case the creditor in question extended the credit by reason of or with any knowledge of George Stoddard's supposed connection with the firm.

Counsel say in their brief, page 11, after dealing with the alleged facts which they point to as indicating a "*holding out*" of himself as a partner by George Stoddard after his actual withdrawal:

"We think the evidence in this case is clear, decisive and uncontradicted to the effect that appellee has never legally withdrawn from the bankrupt firm and that the consequences of becoming a partner, which are attributes imposed by law, are still to be attached to him, and not having effected a legal retirement he can not have his claim against the bankrupt estate allowed pro rata with firm creditors."

In this we confidently contend that counsel are in error. After an actual withdrawal of one partner as between himself and his co-partners his conduct in regard to holding himself out as a partner can have in the abstract and independent of the facts of any particular case, no effect whatever, and to say that such

conduct after an actual withdrawal would result in his never having legally withdrawn is in our view a clear misconception.

The significant matter in this connection is that the only creditors having claims against the bankrupt's estate, and therefore the only parties in interest on this proceeding admittedly became creditors subsequent to George Stoddard's retirement and *there is no showing or evidence whatever* that any creditor had any dealings whatever with the firm prior to George Stoddard's retirement in 1897, or ever knew or had reason to know or suspect at any of the times when the credit was extended that George Stoddard was a member of the firm, or that the action of any creditor in extending credit was *in any way induced by any act or omission on the part of George Stoddard.*

Counsel say on page 8 of their brief:

"The controlling issue here is whether appellee gave such notice of his retirement to relieve himself of future liability to subsequent creditors dealing with the firm."

Again on page 9 of appellant's brief:

"The defense of notice is one which appellee in order to limit his liability is bound to establish"

From these quotations the fallacy of appellant's position is, we submit, apparent. George Stoddard hav-

ing actually withdrawn from the partnership 11 years before, and there being no evidence to show or even tending to show that any act on the part of George Stoddard after withdrawal, induced the extending of credit on any of the claims against the bankrupt's estate, counsel are apparently forced to take the position as indicated in the above quotations, and ignore one feature which is present in all of the numerous cases cited by counsel referring to the liability of a partner after withdrawal by reason of failure to give notice, etc., i. e., the feature characterizing such cases being that in each case the act or omission of the retiring partner has been *proven to have induced the extending of the credit*, thus giving rise to an estoppel.

Indirectly recognizing this feature as necessary to give rise to the estoppel, counsel say with reference to the case of *Thompson vs. First National Bank of Toledo*, 111 U. S., 529, and *Sun Insurance Company vs. Kountz Line*, 122 U. S., 583, that the Supreme Court therein announces the doctrine that the holding out may be so public and long continued as to justify the inference *as a fact* without *direct* testimony, to the effect that one dealing with a partnership knew it and relied upon it. And from this they would have it that no proof is necessary as to the inducement to the granting of the credit in each particular case.

In *Thompson vs. First National Bank of Toledo (supra)*, the Court said:

“A person who is not in fact a partner, who has no interest in the business of the partnership and does not share in its profits, and is sought to be charged for its debts because of having held himself out, or permitted himself to be held out, as a partner, can not be made liable upon contracts of the partnership except with those who have contracted with the partnership upon the faith of such holding out. In such a case, the only ground of charging him as a partner is, that by his conduct in holding himself out as a partner he has induced persons dealing with the partnership to believe him to be a partner, and, by reason of such belief, to give credit to the partnership. As his liability rests solely upon the ground that he can not be permitted to deny a participation which, though not existing in fact, he has asserted, or permitted to appear to exist, there is no reason why a creditor of the partnership, who has neither known of, nor acted upon, the assertion or permission, should hold as a partner one who never was in fact, and whom he never understood or supposed to be, a partner, at the time of dealing with and giving credit to the partnership.

“There may be cases in which the holding out has been so public and so long continued that the jury may infer that one dealing with the partnership knew it and relied upon it, without direct testimony to that effect.”

Counsel rely on the last paragraph quoted as applicable to this case, but we submit that nothing therein contained lends any support to appellant's contention, but that it expressly recognizes the necessity of proof

as a fact that the party dealing with the partnership knew of the "*holding out*." This proof need not be direct, but proof there must be. In the case at bar there is no evidence whatever before the Court as to any of the circumstances of any of the claims of the creditors of the bankrupt other than George Stoddard. For aught that appears each one of the creditors may live in China, and no one of the creditors may have ever heard of George Stoddard, or been in a position to know or observe any of the acts imputed to him as constituting the "*holding out*" of himself as a partner.

The above decision of the Supreme Court obviously means that where certain acts on the part of the retired partner have been long continued and notorious, and where the creditor in question is shown to have been in a position to know of such acts, and where such other facts are proven as with these circumstances would warrant an inference by a jury *as a fact*, that the creditor was induced to act by reason of the actions of the retired partner, then a sufficient showing is made to give rise to the estoppel.

But this does not mean that this Court can *presume* that every creditor of the bankrupt, regardless of the circumstances of his claim, was induced to extend a credit by any of the acts charged to George Stoddard.

As the learned Judge of the District Court says in his opinion (Tr., p. 18):

"Apparently it is conceded by the objecting cred-

itors that the record is insufficient to establish estoppel against the claimant, unless, it being shown that the claimant was at one time a member of the firm and that notice of dissolution had not been given, the Court will indulge the presumption that all creditors, in extending credit, acted upon the assumption that he was a member of the firm when the credits were given. But estoppel is a defense to be affirmatively pleaded and proved by him who would avail himself of it . . .

“It is true that in *Thompson vs. Banks, supra*, and *Sun Insurance Company vs. Kountz Line*, 122 U. S., 583, it was observed that the ‘holding out’ may be so public and so long continued as to justify the inference that one dealing with the partnership knew of and relied upon it; but no presumption is thus implied. Whether the creditor knew that the person against whom he seeks to recover represented himself to be a member of the firm receiving credit, and whether to his injury, he acted upon such knowledge, are questions of fact to be proved, not necessarily by direct testimony, but by evidence either positive or circumstantial. *Here the record discloses no evidence from which the Court can reasonably infer that any of the creditors, in dealing with the bankrupt firm, relied upon the responsibility of George Stoddard; it is not even shown that any one of them at any time knew that he ever was a member of the firm.*” (Italics ours.)

This distinction is brought out in the following from the decision in *Thompson vs. First National Bank of*

Toledo (supra), which in the decision immediately follows the excerpt last quoted above therefrom:

“But the question whether the plaintiff was induced to change his position by acts done by the defendant or by his authority is, as in other cases of estoppel in pais, a question of fact for the jury, and not of law for the court. The nature and amount of evidence requisite to satisfy the jury may vary according to circumstances. But the rule of law is always the same, that one who has no knowledge or belief that the defendant was held out as a partner, and did nothing on the faith of such a knowledge or belief, can not charge him with liability as a partner if he was not a partner in fact.”

Lastly, under this head: The anomalous situation which would result if counsel's contentions were sustained by this Court, is most aptly illustrated in the language of the learned Judge of the District Court, found in his decision (Tr., p. 17), as follows:

“If, however, an objection of this kind when raised by a single creditor, may avail to defeat the allowance against a bankrupt estate of the claims of a person sought to be estopped, the conduct of the claimant amounting to estoppel as to one creditor may operate vicariously as an estoppel in favor of all other creditors, regardless of the question whether or not they have been misled or deceived by any action or inaction on the part of the claimant, or whether they had any knowledge of the ‘holding out.’ In this particular case, if it be as-

sumed that the evidence discloses that George Stoddard induced some one of these objecting creditors to extend to Stoddard Brothers Lumber Company credit, upon the belief that he was a responsible member of the firm, why should his claim be postponed to those of other creditors who were not so deceived? If claimant has misled any creditor, it does not follow that his mouth is closed to deny responsibility to some other creditor. But the absolute disallowance of his claim in effect charges him with responsibility to all creditors alike. It is thought that, as a general rule, this objection does not furnish sufficient ground for the rejection of a claim otherwise just and valid. At most, it can be asserted only by a creditor in whose favor the facts constitute an estoppel against the claimant.

“It is true that upon the withdrawal of George Stoddard in 1897, no formal or public notice was given of that fact, and no change was made in the firm name. The only notice which was given was to the Dunn and the Bradstreet Mercantile agencies. It is, however, *not pretended that any of the present creditors, had, prior to George Stoddard's withdrawal, ever transacted business with the firm,* and, while there was no change in the business name, it is not contended that either before or after the claimant's withdrawal, his name ever appeared upon the letter or bill heads, or in other advertisements of the partnership business.” (Italics ours.)

In the case of *Swigert vs. Aspden*, 52 Minn., 565, the Court says:

“The prevailing rule may thus be summed up: ‘When a firm which remains after the dissolution as the successor of the partnership dissolved, whether carrying on the business under the same name or a different name, has business relations with a stranger who has no dealings with the former partnership, and who has no knowledge of such partnership—*notice of any kind is unnecessary* in order to enable the retiring members of the old company to escape liability for such subsequent contracts.’”

See also:

Wade in Notice, Nos. 489, 490;
Dowzelot vs. Rawlings, 58 Mo., 75;
Cook vs. State Co., 36 Ohio, 135;
Bunk vs. Page, 98 Ill., 109;
Pratt vs. Page, 32 Vt., 13;
Lovejoy vs. Spofford, 93 U. S., 430.

There is another consideration which is important here. The adjudication of bankruptcy is:

“That the Stoddard Brothers Lumber Company, a partnership composed of Alexander K. Stoddard and Charles Moslander, be adjudicated a bankrupt . . .” (Tr., p. 2).

The District Court has adjudicated that the partners and the only partners composing the firm of Stoddard

Brothers Lumber Company, a Bankrupt, are A. K. Stoddard and Charles Moslander. If the Referee can properly reject a claim against a partnership presented by one not declared by the adjudication of bankruptcy to be a member of the partnership, upon the ground that the claimant is in fact a member of the partnership, then it must follow that the Referee can reverse or amend the decree of the District Court adjudicating the bankruptcy.

The adjudication of bankruptcy proceeds *in rem* and all persons interested in the *res*, are regarded as parties to the bankruptcy proceedings.

In re Beale, 116 Fed. Rep., 530.

The adjudication proceeds *in rem* and all persons interested in the *res* are bound, and these include not only the bankrupt and trustee, but also all the creditors of the bankrupt.

The adjudication of bankruptcy determines the status of the bankrupt.

Carter vs. Hobbs, 92 Fed., 594;

Whitney vs. Wenman, 140 Fed., 690;

Bear vs. Chase, 99 Fed., 920;

In re Reese, 115 Fed., 993;

Bankruptcy Laws, Sec. 20.

We submit that the Referee has no power to ignore the judgment of the District Court adjudging the status of the bankrupt, and adjudging as to what part-

ners comprise the bankrupt firm, and to attempt to find that others are members of the bankrupt firm.

See

Bankruptcy Laws, Sec. 546;

In re Imperial Corporation, 13 Am. Bankruptcy
Rep., 199.

It appears to us that if it be contended that the claim of a claimant not named as one of the partners in the adjudication of bankruptcy should be postponed or disallowed for the reason that he is in fact a member of the bankrupt firm, application must be made to the Court so that the status of the bankrupt as determined by the Court in the adjudication of bankruptcy may be re-declared and re-established by an amended decree. We certainly think that this point can not be passed upon by the Referee.

2. Concerning the two \$6,000.00 notes signed by A. K. Stoddard and Charles Moslander; it is contended by appellant that because these notes are not signed in the firm name they are conclusively individual liabilities of the partners and not firm liabilities, and that parol evidence is inadmissible to show that the indebtedness was in fact an indebtedness of the partnership.

In the judgment allowing appellee's claim in the District Court (Tr., p. 27) is the following:

“It is further adjudged that the two \$6,000.00 notes, herein referred to, while signed by the members of the partnership individually, were intended to be and are claims against the partnership, and are not the individual or personal obligations of the partners signing the same.”

In addition to citations to certain text writers and some early cases the only cases on this point cited by appellant are those of *In re Jones*, 116 Fed. Rep., 431, and *Strause vs. Hooper*, 105 Fed., 590.

It is on these cases that appellant rests his contention that because signed in the individual names of the partners the notes are conclusively the personal obligations of the partners; and the decisions in both of said cases bear out counsel's contention. But, both cases are decisions of his Honor, Judge Purnell, of the District Court, the Eastern District of North Carolina. And the later case, *In re Jones*, quoted from in appellant's brief, page 24, upon being appealed to the Circuit Court of Appeals was squarely reversed on the point to which counsel cites it. This appeal is found in *Davis vs. Turner*, 120 Fed., 605; in that case the Court says at page 609:

“There was no testimony whatever to contradict these facts, and the referee finds, as an additional fact, that there was no fraud in the execution of the bond. The referee, however, in his report, which was confirmed by the court in bankruptcy, holds as a matter of law that, because the bond is signed by

the members of the firm individually, under their separate signatures and seals, it is an individual debt, and can not be proven, as against the partnership assets of Jones, Raper & Co., until all the partnership debts have been paid in full. In this conclusion we think there is error, and that although the paper bears the signatures and seals of the individuals composing the firm, yet, from the uncontradicted evidence, it appears affirmatively and fully that the debt was contracted by the firm for its benefit, and that the whole proceeds of the note were used in the due course of the partnership business. The undisputed evidence in the case establishes the fact beyond controversy that the bond to Hinton was for a firm debt, and we so hold, and that, as such debt, it is provable against the estate of the partnership in bankruptcy.”

The Court says further on page 609, referring to the introduction of parol evidence to show the real nature of the obligation and its consideration:

“These principles have not been confined to individual transactions, but have also been applied to partnerships. In the case of *In re Warren*, Fed. Cas. No. 17,191, 2 Ware, 322, it is held that, where all the members of a firm have incurred a written obligation by signing their respective individual names instead of the firm name, it is merely a presumption that the obligation is individual rather than firm, but the presumption may be rebutted if in fact it is a firm obligation. The Supreme Court of Tennessee, in *Puckett vs. Stokes*, 61 Tenn., 442,

lays it down that, 'where only one member of a firm signs his individual name to a note, the firm will be bound thereby, as one of the partners made the contract, and the credit was given to them as such.' The doctrine is upheld in *Hubbell vs. Woolf*, 15 Ind., 204; *Buckner vs. Lee*, 8 Ga., 285; *Farmers' Bank vs. Bayliss*, 41 Mo., 275, and in many other cases which might be cited, all to the effect that a note signed by the members of a firm in their individual names can be recovered against the partnership, when it is shown affirmatively that it was a partnership transaction, and the partnership received the benefit of it."

In the case of *In re Weisenberg & Co.*, 131 Fed., 522, referring to the effect of parol evidence introduced to show that an obligation signed in the individual names of the partners is in fact a firm obligation, the Court says:

"It has been pointed out that it is not a violation of that rule to add a party to a contract in writing, either as obligee or obligor, to the extent laid down in the case of *Nash vs. Towne*. If this is so, it is hardly a violation thereof to show in this proceeding that the joint liability of the two members of the firm of L. B. Weisenberg & Co. was in fact the liability of the firm."

* * * * *

"My conclusion, therefore, is that the bank had a right to show, if it could, that the joint notes held by it were the firm debts of the bankrupt firm of L. B. Weisenberg & Co. Did it show that said

notes were in fact firm debts? There is a difference in the authorities as to whether the joint notes of the members of a firm executed in the strict partnership business for a consideration passing to the firm, nothing else appearing, are to be treated as debts of the individuals, or of the firm. In the following cases they were held to be debts of the individuals, to wit: *In re Bucyrus Machine Co.*, Fed. Cas. No. 2,100; *In re Holbrook*, Fed. Cas. No. 6,588; *In re Herrick*, Fed. Cas. No. 6,420; *Strause vs. Hooper*, 5 Am. Bankr. Rep., 225, 105 Fed., 590; *In re Jones*, 8 Am. Bankr. Rep., 626, 116 Fed., 431. The doctrine of these cases is approved in *Collier on Bankruptcy* (4th Ed.), 72, and in a note to the case of *Strause vs. Hooper* by the author of that work—possibly, also, by Bump & Loveland in their works on *Bankruptcy*. Possibly the Holbrook case is to be distinguished by the fact that the note in that case was signed also by other individuals, not members of the firm, as sureties, and it was the joint and several note of all, and not the joint note of less than all. Possibly, also, the Herrick case is to be distinguished by same consideration. In the following cases the joint notes were held to be firm debts, on the ground that they were executed in the partnership business, and for a consideration passing to the firm, to wit: *In re Warren*, Fed. Cas. No. 17,191; *In re Thomas*, Fed. Cas. No. 13,886; *Davis vs. Turner*, 9 Am. Bankr. Rep., 704, 120 Fed., 605, 56 C. C. A., 669. The same thing has been held in quite a number of State decisions, most of which have been cited by the counsel for the bank. *And I think that it may*

be correctly said that the decided weight of authority is to that effect." (Italics ours.)

Thus not only is parol evidence clearly admissible to show the real nature of the debt as between the partnership and the individual partners, but in the language of the decision last quoted, the decided weight of authority is to the effect that joint notes of the members of a firm executed in the strict partnership business for a consideration passing to the firm, *nothing else appearing*, are to be treated as debts of the firm.

Here not only were the notes given in the ordinary course of the business of the firm as the purchase price for lumber purchased by the firm, but all the circumstances of the transaction as disclosed by the evidence clearly showed affirmatively that it was the intention of all the parties that the notes should operate as a firm obligation.

Touching this contention now urged by appellant, the learned Judge of the District Court speaks as follows in his decision:

"3. Two notes, dated April 5, 1904, each for \$6,000, are signed, not in the firm name, but by the individual members of the firm, namely, Alexander K. Stoddard and Charles Moslander; and it is contended on behalf of the creditors that these notes are not valid claims against the bankrupt firm, but are only obligations of the individual members thereof, and that therefore they can not be paid until the creditors of the firm, as such, are

fully satisfied. Over objections, oral evidence was received to show that the consideration of the notes was a firm obligation; and it is argued that such evidence is inadmissible in that it tends to contradict and vary the terms of a written contract. There is much to be said both for and against the view that oral evidence can not be received for this purpose, but my conclusion is that, while the form of the contract makes a *prima facie* case of individual liability only, oral evidence may be received to show the real transaction. And where it appears, free from doubt, that the consideration of the instrument passed not to the individual but to the firm, and that it was not given or received for the purpose of substituting an individual for a firm obligation, and that the form was accidental, the obligation is provable against the partnership estate. Here there is no evidence that either party intended to substitute an individual for a firm obligation, or that either party understood that by the form of the notes the existing obligation, which was strictly one of the firm and not of the individual members of the firm, would, in any wise, be altered; nor does it appear that either party understood that the obligation of the individuals was in any respect to be increased or modified. There is no reason to believe that if the legal effect of an instrument signed by the individuals severally, had been called to the attention of the parties at the time, the notes would have been executed in their present form. There is no showing that the members of the firm had property of any considerable value other than their interests in the joint enterprise, and there is

no apparent reason why the claimant should have preferred an individual obligation to a firm obligation. It is therefore thought that the referee correctly ruled in receiving such evidence; and it is concluded that the evidence shows, beyond doubt, that these notes were intended to, and do represent firm, and not individual, obligations.

“No decision has been called to my attention, and I have found none, announcing the rule that oral testimony may not be received for the purpose for which it was offered. There is a diversity of opinion as to the effect to be given to such testimony, and when it should be held that the obligation is of the partnership, and when of the individual members thereof. This diversity is fairly exemplified by the opinions in the following cases: *Davis vs. Turner*, 120 Fed., 605 (9 Am. Bank Cases, 704); *Strausse vs. Hooper*, 105 Fed., 590; *In re Warren*, 17191 Fed. Cases; *In re Herrick*, 6420 Fed. Cases; *In re Bucyrus Machine Co.*, 2100 Fed. Cases; *In re Holbrook*, 6588 Fed. Cases; *In re Thomas*, 13886 Fed. Cases.”

(Tr., pp. 21 and 22).

Counsel have caught at one phrase in the testimony of George Stoddard to which they attempt to give a significance which is, in our judgment, entirely unwarranted by the context. On page 20 of their brief counsel say:

“The uncontradicted evidence of appellee is that the notes were signed individually because he

thought the individual signature was really better than the company's signature."

The circumstances appear from the following from the testimony of George Stoddard:

"Q. These two notes of \$6,000.00, each dated April 5, 1904, exhibits 8 and 9, given both for lumber furnished to Stoddard Brothers Lumber Co., here?

"A. Yes, sir.

"Q. How do these come to be signed this way?

"A. Well, about that time Moslander was here and they were in a position at that time that they could not meet their bills and of course I came to their rescue. That is when I signed this note over to the bank here if I remember right" (Tr., pp. 41, 42).

* * * * *

"Q. You may state whether or not at the time they were signed by A. K. Stoddard and Charles Moslander, state whether or not those notes were given for a partnership liability, being the firm of Stoddard Brothers Lumber Company.

"A. For lumber furnished the business.

"Q. The business of whom?

"A. Stoddard Brothers Lumber Company.

"Q. You may state who furnished the lumber.

"A. It was furnished by Stoddard Brothers of Baker City.

"Q. State who was the owner of that claim of Stoddard Brothers.

“A. Why Stoddard Brothers. It was assigned to me.

“Q. Where did the lumber go that you shipped?

“A. It went to Nampa, Idaho.

“Q. Who used the lumber—who had the lumber?

“A. Why, it was shipped to the Stoddard Brothers Lumber Company.

“Q. State whether or not it has ever been paid for.

“A. No, sir, it has not.

“Q. You may state, if you know, why those notes were signed individually instead of Stoddard Brothers Lumber Company.

“A. Why, I don't know; the two parties were there and they just signed them in that way; I thought there was no difference, knowing that they were the two that constituted the business; I thought the individual signature was really better than the Company's signature” (Tr., pp. 50, 52).

Obviously this was a transaction in the ordinary course of the business of this partnership wherein lumber was sold by Stoddard Brothers of Baker City, represented by George Stoddard, to the Stoddard Brothers Lumber Company, the bankrupt. And when George Stoddard says in reference to the signing of the notes, that he thought it didn't make any difference, and thought that the individual signature was really better than the company's signature, he undoubtedly meant that he thought it was better *in order to bind the company*. We submit that it is only by the

most strained construction that this last phrase of his answer can be distorted into meaning that he did not, as the evidence shows he did in every other instance, look to the firm for the payment for goods sold to the firm, but on the contrary, for some unexplained and unknown reason, looked to the individual partners, who, according to the uncontradicted evidence and as known by George Stoddard, had no independent means outside of the partnership assets.

On page 25 of their brief counsel say that appellee deliberately had these notes executed individually, "as he thought the individual signature better, obviously because of the value of the ranch of Stoddard and Moslander in Wyoming." And yet, on page 4 of their brief, counsel in speaking of this ranch, say: "Which partnership consisting of a ranch has always been listed by the bankrupt firm as one of its assets, and valued at from fifty to seventy thousand dollars." And this last statement is borne out by the evidence shown on page 36 of the Transcript. In fact, the District Judge made a reduction in appellee's claim because of appellee's voluntary release of a mortgage which he held upon this very ranch; this upon the theory that by a voluntary release of a firm asset securing appellee's debt, appellee's claim should be cut down accordingly. We are therefore unable to see on what counsel base their statement as to the reason why the personal obligation of the partners was preferred by George Stoddard.

3. Lastly, appellant contends that appellee "has been guilty of fraud as to all creditors by knowing of the non-entry and not having entered upon the firm's books his present claims." And because of the sending out of credit slips by the firm which contained a statement of appellee's claim contrary to the fact.

An analysis of the evidence reveals the fact that there was no proof of fraud and no proof of facts from which fraud could be inferred; but even assuming the truth of every statement contained under this head in counsel's brief, we submit that as a matter of law no reason appears for the cutting down of appellee's claim. We are at a loss to find any evidence in the record in any way showing that any credit upon any of the claims approved against the bankrupt's estate was extended by reason of any of the acts charged as constituting fraud on the part of George Stoddard. Apparently counsel's theory is that if it appear that a bankrupt has, with the knowledge of a claimant against his estate, made fraudulent entries on his books and has given out false credit statements to certain parties as to the amount of the claim of such claimant, then such claimant is not entitled to prove his claim against *any* creditor, regardless of whether or not it appears that the fraudulent entries were known or the fraudulent credit slips sent to any creditor whose claim is involved in the bankruptcy proceedings. We think that there is here involved the same misconception as that treated of under counsel's contention that a mere holding out as a part-

ner on the part of a claimant bars such claimant from proving his claim, whether or no there be any showing that any creditor has been injured thereby. Obviously, in a case of fraud such as counsel refers to, it is only by the operation of the principle of estoppel that the claimant in question would be barred from proving his claim. But the bar of the estoppel arises only with reference to the particular claims of particular creditors who are able to show that in fact the fraud complained of induced them to extend the credit upon their claims. The language of the learned District Judge found on page 17 of the Transcript, in reference to the claim of ostensible partnership, is particularly apt in this connection. If an objection of this kind may be raised by a single creditor so as to defeat *in toto* the allowance against a bankrupt estate of the claims of a person sought to be estopped, then the conduct of the claimant amounting to estoppel as to one creditor would operate vicariously in favor of all other creditors, regardless of the question whether or not they had been misled or deceived by any action or inaction on the part of the claimant. If claimant's alleged fraud has deceived any one creditor, what occasion in fact or in law would that create for the postponement of the payment of such claim until after the payment of other creditors who were not in any way deceived by such alleged fraud? As the learned Judge of the court below says:

“If claimant has misled any creditor it does not follow that his mouth is closed to deny responsibility to some other creditor. But the absolute disallowance of his claim in effect charges him with the responsibility to all creditors alike.”

Which is to the point, that the record here discloses no evidence that any of the claims now allowed against the bankrupt's estate were in any way affected by any of the alleged fraudulent acts charged to appellee, for the reason that there is no showing that any of such facts were known to any such creditor. The following appears in the record:

“Q. You made several credit statements during the year 1906 to people you were owing?

“A. Yes, sir” (Test. A. K. Stoddard, Tr., p. 32).

* * * * *

“Q. That is substantially the statement you sent out up to last December in all cases?

“A. Yes, sir” (Test. A. K. Stoddard, Tr., p. 33).

* * * * *

“Q. Mr. Stoddard, did you make out a credit slip in 1906 for the American Steel & Wire Company?

“A. Yes, sir” (Test. A. K. Stoddard, Tr., p. 38).

This last is followed by certain evidence as to the contents of such credit slip. But can it be contended that the foregoing testimony establishes the fact that any misrepresentation as to the amount of George Stoddard's claim was made to all of the creditors, or to any

particular creditor, or to the American Steel & Wire Company before the accruing of the claim of such company; or that there is now a single claim against the bankrupt estate on which any of the credit was induced by any such misrepresentation.

We are at a loss to conceive how any alleged non-entry upon the books of the amount of George Stoddard's claim could affect any creditor in the absence of a showing that the books were examined by the creditors. At most, we apprehend that other creditors would be affected only by the credit slips sent to them, and there is not a word of evidence tending to show that George Stoddard knew of the sending out of any credit slips or of the contents of the same, or that he in any way controlled the same. As indicating that George Stoddard did know of the non-entry of his claim upon the books counsel considered the following sufficiently important to quote on page 15 of their brief:

“Q. All we want to know is that you left them off. George Stoddard knew of that discrepancy at the same time?”

“A. I guess he did.”

We take it that George Stoddard's rights are not to be jeopardized by any *guesses* which may be indulged in by this witness. His guesses are not evidence. Such knowledge on the part of George Stoddard would have no significance in any event, in the absence of any showing that the creditors knew of the condition of the books,

but the foregoing indicates the difficulty appellant finds in searching the record for evidence to support his theories. Any fraud on the part of the firm not participated in by George Stoddard would certainly not operate in any way to defeat his claim.

All of the foregoing considerations are with reference to the facts of the case as claimed to exist by appellant. If the Court is not satisfied that the law as applied to these facts precludes the granting of any of the relief asked by appellant, an examination of the record will disclose that the facts as established by the evidence do not bear out any of the charges of fraud against appellee, or any of the charges that appellee has held himself out as a partner in the firm after his actual withdrawal. Counsel say on page 2 of their brief:

“The testimony of the two brothers as to the time of the alleged withdrawal of George Stoddard is hopelessly irreconcilable.”

The following appears in the testimony in this connection:

“Q. On what date did you buy George out?

“A. The first of March, 1897” (Test. of A. K. Stoddard, Tr., p. 34).

* * * * *

“Q. When did you dispose of that interest?

“A. I disposed of it March 1, 1897” (Test. of George Stoddard, Tr., p. 65).

This is an example of the numerous instances in which, as we believe, counsel's zeal has warped their view of the evidence.

On page 2 of their brief counsel say:

"No definite arrangement for the disposal of George Stoddard's half interest in the firm was made."

The following appears in the record in this connection:

"Q. And A. K. bought your interest, and paid you part in his notes?"

"A. Yes, sir" (Test. George Stoddard, Tr., p. 65).

* * * * *

"Q. Any record made showing that change in the partnership?"

"A. Yes, sir.

"Q. What record?"

"A. The record that I bought George Stoddard out and gave him notes for the amount due him" (Test. A. K. Stoddard, Tr., p. 30).

* * * * *

"Q. Who bought George Stoddard's interest?"

"A. I did.

"Q. How did you sign the notes?"

"A. A. K. Stoddard" (Test. A. K. Stoddard, Tr., p. 33).

Counsel say, on page 2 of their brief:

“It is claimed that in making reports to Bradstreet and Dun’s afterwards George Stoddard was not included as a member, but *it was not reported to them that he had retired from the firm . . .*”

The following appears in the record:

“Q. What, if any, notice was given to creditors, when George Stoddard went out of the firm four years ago?

“A. There was nothing published at that time, only the statement that was given in to Bradstreet’s and Dun’s, that *George was not interested* and that Charles Moslander was” (Test. A. K. Stoddard, Tr., p. 31).

It is true no notice of George Stoddard’s withdrawal was ever published. We submit that there is no significance in this fact under the authorities cited above. But there is nothing in the record as indicating any ulterior purpose whatever in the failure to make this publication. The withdrawal was twelve years before the bankruptcy, and there is nothing to show that there was any occasion or necessity for the publication of notice. The fact that none of the present creditors are shown to have ever had any dealings with the firm while George Stoddard was a member would seem to dispose of this consideration.

Much is made by counsel over George Stoddard’s negotiating firm loans; and in fact, this negotiating of

firm loans, and the matter of the non-entry of his claim upon the books of the firm, and the failure to include all the debts of the firm in the credit statements, seem to be the main ground of reliance on the part of counsel. Counsel say that appellee "has always acted as its financial agent, personally negotiating all the company's loans, signing their notes as a joint maker."

The record does not show that the appellee performed any acts not entirely consistent with his position as a creditor of the bankrupt firm, and a large creditor, giving it what assistance he could in order to assist in the successful operation of the business and thus assure the payment of his own large claims. The situation in this regard clearly appears from the following extracts from the testimony:

"Q. So you virtually acted as their financial agent or financier all the way through these dealings?

"A. Well, there was a reason for it.

"Q. What was that reason?

"A. If you will allow me to explain the whole thing I will give it to you.

"Q. Just explain why you negotiated the loan personally.

"A. At the time the loan was negotiated from David Eckles Stoddard Brothers wanted the money at Baker City and Stoddard Brothers Lumber Company was owing them, so I arranged to get the money for Stoddard Brothers Lumber Company and I endorsed. Well, a year or two later Eckles

wanted his money; they could not pay it; so I arranged to get the money from La Grande—from the La Grande National Bank; and then the La Grande National Bank wanted their money and it was gotten from Will Church; and later on, in order to clean up those scattering accounts, to finish paying Eckles, the money was borrowed from the Desert Savings Bank, and that is what these notes represent.

“Q. Why did Stoddard Brothers Lumber Company have you personally negotiate these loans rather than anyone else?

“A. Because there was no one else; they couldn’t get it.

“Q. Were you interested in the firm in any way?

“A. No, sir, only what they owed me” (Test. George Stoddard, Tr., pp. 68, 69).

* * * * *

“Q. Have you ever acted as agent in any other capacity for the firm of Stoddard Brothers Lumber Company except in negotiating these loans?

“A. Not that I remember.

“Q. Have you ever made a purchase of any merchandise for them?

“A. No, sir” (Test. George Stoddard, Tr., p. 70).

On the question of the entry of the appellee’s claim upon the firm’s books, the following appears in the record:

“Q. When did you first discover that there was

a mistake on the books of the firm in regard to your account?

“A. It was the fall of 1906—well, it was on the first of the year—it was the fall of 1906 or the first of 1907.

“Q. You know you had notes of Stoddard Brothers Lumber Company which were not entered upon their ledger?

“A. I knew this way; I saw the amount of the bills payable and I knew it was not enough.

“Q. Did you ever make a written request to that firm to enter upon their ledger your credits?

“A. Yes, sir, I sent them a statement.

“Q. When did you send that statement?

“A. I think the first of the year 1907.

“Q. The first of the year 1907?

“A. Yes, sir.

“Q. In the testimony of Mr. A. K. Stoddard he said emphatically that the first written request he ever received from you was in December, 1907, after these letters of insolvency had been sent to the creditors?

“A. That is not so. Well, now, I will verify that. Whether I wrote or whether I gave it to him when I was there, and at that time——

* * * * *

“Q. What I want to know is whether you gave him a written statement before December, 1907?

“A. Yes, sir, he got a statement before December.

* * * * *

“Q. Did you ever take any steps to have your credits entered up on the ledger, except that statement?

“A. No, sir, because I didn't know what was done; I left there after that” (Testimony George Stoddard, Tr., pp. 70, 71, 72).

There is no showing whatever that George Stoddard had anything to do with any credit slips or credit statements made to any of the firm's creditors, or that he ever knew of the same or the contents thereof. We are unable to discover any evidence in regard to the release of \$12,000 mortgage held by appellee indicating any fraud upon any creditor. In this regard the District Judge says in his opinion (Tr., p. 24) :

“6. The claimant held a mortgage upon real estate in Wyoming belonging to the bankrupt firm, the mortgage having been given as security to him to indemnify him against loss by reason of obligations upon which he had become surety for the partnership, the amount of the mortgage security being \$12,000. It is admitted that this mortgage was voluntarily released by the claimant in order that the bankrupt might sell and transfer the property. Out of the proceeds of the sale of this property obligations of the firm upon which the claimant was liable as a surety were paid to the aggregate amount of \$11,625.00. To this extent the creditors were not injured by the release of the mortgage. The claimant is chargeable with the

amount lost to the creditors by reason of the voluntary release, namely, \$375.00, which amount should be deducted from his claims.”

We respectfully submit that the judgment of the lower court should be affirmed.

Respectfully submitted.

CAMPBELL, METSON, DREW,
OATMAN & MACKENZIE,
Attorneys for Appellee.





